

No. 2427

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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R. M. COURTNEY and H. K. LOVE,  
Plaintiffs in Error.

VS.

TOM P. KING and BAPTISTE SERAFINO,  
Trustees,  
Defendants in Error.

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**Transcript of Record.**

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Upon Writ of Error from United States District Court of  
the Territory of Alaska, Fourth  
Division.

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**FILED**

MAY 28 1914



No. \_\_\_\_\_

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Circuit Court of Appeals  
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Upon Writ of Error from United States District Court of  
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Division.

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Due service and receipt of three copies hereof ad-  
mitted this... *Sixth* .....day of May, 1914.

*Cecil H. Clegg*  
\_\_\_\_\_  
Attorney for Defendants in Error.

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## INDEX.

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	Page
Answer, Separate, of R. M. Courtney.....	6
Answer, First Further and Separate, of R. M. Courtney .....	7
Answer, Second Further and Separate, of R. M. Courtney .....	8
Answer, Separate, of H. K. Love .....	11
Answer, First Further and Separate, of H. K. Love .....	12
Answer, Second Further and Separate, of H. K. Love .....	17
Answer, Third Further and Separate, of H. K. Love .....	22
Assignment of Error .....	146
Bill of Exceptions .....	31
Bill of Exceptions, Notice of Filing of.....	140
Bill of Exceptions, Order Allowing .....	141
Complaint .....	2
Court's Instructions to Jury .....	128
Clerk's Certificate to Record .....	160
EXHIBITS:	
Plaintiffs' Exhibit 1, (Bill of Sale).....	33
Plaintiffs' Exhibit 2, (Bill of Sale).....	36
Plaintiffs' Exhibit 3, (List of Names).....	60
Plaintiffs' Exhibit 4, (Notice to Marshal of Ownership of Personal Property).....	62
Defendants' Exhibit A, (Certified Copy of Original Papers and Docket Entries in Commissioner's Court .....	87

Index.	Page
EXHIBITS—(Continued):	
Defendants' Exhibit B, (Certified Copy of Original Papers and Docket Entries in Commissioner's Court) .....	102
Judgment on Verdict .....	142
Motion, Defendant's, for Nonsuit or Instructed Verdict .....	84
Names and Addresses of Attorneys of Record...	1
New Trial, Motion for .....	138
New Trial, Order Overruling Motion for.....	140
Praecipe for Transcript .....	159
Reply to Answer of Defendant Courtney.....	26
Reply to Answer of Defendant Love.....	27
Stipulation Relative to Printing Record.....	1
TESTIMONY IN BEHALF OF PLAINTIFF:	
Samuel Fowler .....	55
Samuel Fowler (Cross-Examination) .....	55
Carl Post .....	56
Carl Post (Cross-Examination) .....	58
Baptiste Serafino .....	31
Baptiste Serafino (Cross-Examination) ....	43
Baptiste Serafino (Redirect Examination)..	53
Baptiste Serafino (Recalled) .....	58
Baptiste Serafino (Recross Examination)..	61
C. H. Ward (Deposition) .....	65
C. H. Ward (Deposition, Cross-Examina- tion) .....	74
C. H. Ward (Cross-Examination) .....	80
C. H. Ward (Recross Examination) .....	82
C. H. Ward (Further Redirect Examination)	83

## Index.

Page

## TESTIMONY IN BEHALF OF DEFENDANT:

John Barrack .....	118
John Barrack (Cross-Examination) .....	122
John Durand .....	125
John Durand (Cross-Examination) .....	126
Baptiste Serafino .....	124
S. B. Waite .....	123
S. B. Waite (Cross-Examination) .....	124
Samuel R. Weiss .....	86
Verdict .....	137
Writ of Error .....	149
Writ of Error, Citation on .....	151
Writ of Error, Designation of Place for Hear- ing of .....	156
Writ of Error, Order Allowing and Fixing Bond	148
Writ of Error, Petition for .....	145
Writ of Error, Order Relative to Supersedeas Bond on .....	152
Writ of Error, Supersedeas Bond on .....	154
Writ of Error, Nunc Pro tunc Order Extending Time Within Which to File and Docket Cause on .....	157



**Names and Addresses of Attorneys of Record.**

McGOWAN & CLARK, Attorneys for Defendants  
and Plaintiffs in Error, Fairbanks, Alaska.

CECIL H. CLEGG, Attorney for Plaintiffs and De-  
fendants in Error, Fairbanks, Alaska.

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In United States District Court for the Territory of  
Alaska, Fourth Division.

No. 1799.

TOM P. KING and BAPTISTE SERAFINO,  
Trustees, Plaintiffs,

vs.

R. M. COURTNEY and H. K. LOVE,  
Defendants.

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[Title of Court and Cause.]

**Stipulation Relative to Printing Record.**

IT IS HEREBY STIPULATED that in printing the papers and records to be used on the hearing of the writ of error in the above entitled cause, for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit, the title of the court and cause in full in all papers shall be omitted, except on the first page of said record, and that there shall be inserted in place of said title, the words "Title of court and cause"; also that the indorsements on all papers, except the Clerk's filing marks, and admissions of service, need not be printed; and also that the verifications of all pleadings may be omitted and the words "duly verified" inserted in place thereof.



Fairbanks, Alaska, April 11, 1914.

CECIL H. CLEGG,

Attorney for Plaintiffs.

McGOWAN & CLARK,

Attorneys for Defendants.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Apr. 11, 1914. Angus McBride, Clerk.

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[Title of Court and Cause.]

**Complaint.**

Comes now the above named plaintiffs and for cause of action against the defendants above named and each of them, alleges as follows:—

I.—That at all the times hereinafter mentioned plaintiffs were and now are acting trustees for the benefit of themselves and certain other creditors of the Russian Mining Company, an insolvent copartnership theretofore carrying on the business of mining in the Fairbanks Recording district, Alaska.

II.—That in the Fairbanks Recording District, Alaska, on the 11th day of June 1912, plaintiffs as such trustees were, and now are, the owners and entitled to the immediate possession of all of the following described personal property, situate in the Fairbanks Recording District, Alaska, namely,—

One double cylinder hoist

One 18 H. P. Boiler

One carrier

One bucket

One trolley cable

One hundred and twenty cords of wood

Six shovels

Four picks

Twelve feet pick steel

Eight point hose

Ten feet 5-8 inch Iron

Eighteen feet 1 inch pipe

Four gals. Benzine oil

Five gals. Red oil

One hack saw

One jack plane

One small hand drill

Thirty six dinner plates

Eight meat knives

Thirty knives and forks

Thirty table spoons

Twenty tea spoons

Twelve soup bowls

Thirty tea cups

Thirty saucers

Two large meat trays

Two mixing pans

Two dish pans

One tea pot

One coffee pot

Two large meat pots

One flour sieve

One syrup cup

One bread knife

Eight wheel barrows

Two dozen picks

Ten 10 ft points  
Ten 12 ft points  
One horse harness and sleigh  
One hundred and forty five pounds fresh beef  
Ten lbs coffee  
Five lbs Baking powder  
One lb. tea  
Six 1-gal cans apples  
Eighteen cans tomatoes  
Fourteen cans beefs  
Twenty five lb. box dried apples  
 $\frac{3}{4}$  box Ivory soap  
Three sacks rolled oats  
Eighteen cans fig pudding  
One hundred and fifty pounds Bayo beans  
Forty pounds small white beans  
Sixteen pcs bacon  
One case bacon  
Five lbs split peas  
 $\frac{1}{2}$  gal. molasses  
Twenty seven cans cream  
Fifteen pounds sugar  
Twenty six pkgs corn starch  
Fifty pounds flour  
Seventeen cans tomatoes  
Six cans olive oil  
28 cakes Armour's white soap  
11 cans pumpkin; 5 lbs salt, 3 cans beets  
Seven cans tomato catsup  
15 lbs coffee  
One box candles.



III.—That on the 11th day of June 1912, and prior to the commencement of this action defendants herein wrongfully and unlawfully seized and took possession of all of the above described personal property, and they do now wrongfully and unlawfully withhold and detain the possession thereof from plaintiffs, who are legally entitled to the immediate possession thereof.

IV.—That the above described property was on the 11th day of June 1912 and now is of the value of seventeen hundred dollars.

V.—That by reason of the wrongful taking and detention of the said property by defendants, plaintiffs have been deprived of the use thereof and thereby damaged in the sum of Three hundred dollars.

VI.—That prior to the commencement of this action plaintiffs demanded of defendants the return and redelivery of the possession of the said property above mentioned and the whole thereof, but to deliver the same to plaintiffs, said defendants have refused and do now refuse.

WHEREFORE plaintiffs demand judgment against said defendants for the return of all of said personal property, or in case return thereof cannot be had, then for the value thereof, to-wit the sum of Seventeen hundred dollars and damages in the sum of Three hundred dollars and costs of this action:

CECIL H. CLEGG,

Attorney for Plaintiffs.

(Duly Verified.) (Indorsed): Filed July 15, 1912.  
C. C. Page, Clerk. By P. R. Wagner, Deputy.

[Title of Court and Cause.]

**Separate Answer of R. M. Courtney.**

Now comes R. M. Courtney, one of the defendants in the above entitled action, and answering for himself individually, for answer to plaintiffs' complaint on file in said action, admits, denies, and alleges as follows, to wit:

I.—Answering paragraph one of plaintiffs' complaint this answering defendant alleges that he has no knowledge or information concerning the matters therein set forth sufficient to form a belief, and basing his denial on such lack of information and belief, denies each and every matter and thing therein contained.

II.—Answering the allegations of paragraph two of plaintiffs' complaint, this answering defendant denies each and every matter and thing therein set forth.

III.—Answering the allegations of paragraph three of plaintiffs' complaint, this answering defendant denies each and every matter and thing therein set forth.

IV.—Answering the allegations of paragraph four of plaintiffs' complaint, this answering defendant alleges that he has no knowledge or information concerning the matters and things therein set forth sufficient to form a belief, and basing his denial on such lack of information and belief, denies each and every of the matters and things therein set forth.

V.—Answering the allegations of paragraph five of plaintiffs' complaint, this answering defendant de-

nies each and every of the matters and things therein set forth.

VI.—Answering the allegations of paragraph six of plaintiffs' complaint, this answering defendant admits the matters and things therein set forth.

This answering defendant, for a further and first separate answer and defense to plaintiffs' complaint, alleges as follows, to wit:

(a) That, on or about the 11th day of June 1912, an action was duly and regularly instituted in the office of the Commissioner and ex officio Justice of the Peace in and for Fairbanks Precinct, at Chatanika, Fourth Judicial Division, Territory of Alaska, entitled J. E. Barrack, plaintiff, vs. The Russian Mining Company, defendant, which said action was numbered in said Court No. 43, and wherein said J. E. Barrack prayed judgment against the defendant for the sum of \$570.20 together with costs of suit.

(b) That at said time there was no United States Marshal or deputy marshal at the place where said Court was held, and pursuant to the provisions of the laws of the Territory of Alaska, Samuel R. Weiss, United States Commissioner and ex officio Justice of the Peace, the Judge of said Court, then and there appointed this answering defendant as a special officer for the purpose of serving the writ of execution issued out of said Court on said defendant by said United States Commissioner in the above last mentioned case, and on said 11th day of June 1912, delivered said writ of attachment to this answering defendant, who



thereupon, pursuant to the provisions thereof, levied on and attached all of the defendant The Russian Mining Company's interest in and to one lot of wood, one boiler house, and all machinery contained therein and in the mine of the defendants Russian Mining Company, or on the surface of said mine, and also on one messhouse, together with all provisions, ranges, cooking utensils, etc., contained therein, all being situate on Discovery claim on the Chatanika River, Fairbanks Precinct, Territory of Alaska, which said property so attached, as this defendant is informed and believes and so alleges, is embraced in the list of property claimed by the plaintiffs in their complaint in this action.

(c) That, pursuant to the instructions given to this answering defendant by the plaintiff in said action, and the United States Commissioner and ex officio Justice of the Peace aforesaid, said attachment was levied and this answering defendant placed a keeper in charge of said property and thereafter, under instructions of the Commr. sold as perishable property 145 lbs of beef for approximately \$40.00, which money was afterwards paid to the U. S. Marshal.

(d) That thereupon this answering defendant's authority ceased and was determined by the terms of his appointment, and this answering defendant has had nothing further to do with said property or any part thereof.

---

This answering defendant, for a further and sec-

ond separate answer and defense to plaintiffs' complaint, alleges as follows:

(a) That, on or about the 11th day of June 1912, an action was duly and regularly instituted in the office of the United States Commissioner and ex officio Justice of the Peace in and for Fairbanks Precinct, at Chatanika, Fourth Judicial Division, Territory of Alaska, entitled C. E. Danforth, plaintiff, vs The Russian Mining Company, defendant, which said action was numbered in said Court No. 44, and wherein said C. E. Danforth prayed judgment against the defendant for the sum of \$437.50, together with costs of suit.

(b) That at said time there was no United States Marshal, or deputy marshal, at the place where said Court was held, and pursuant to the provisions of the laws of the Territory of Alaska, Samuel R. Weiss, United States Commissioner and ex Officio Justice of the Peace, the Judge of said Court, then and there appointed this answering defendant as a special officer, for the purpose of serving on defendant the writ of execution issued out of said Court by said United States Commissioner in said cause, and on said 11th day of June 1912, delivered said writ of attachment to this answering defendant, who thereupon, pursuant to the provisions thereof, levied on and attached all of the defendant The Russian Mining Company's interest in and to one lot of wood; one boiler house, and all machinery contained therein and in the mine of the defendants Russian Mining Company, or on the surface of said mine, and also

one messhouse, together with all provisions, ranges, cooking utensils, etc., contained therein, all being situate on Discovery claim on the Chatanika River, Fairbanks Precinct, Territory of Alaska, which said property so attached, as this defendant is informed and believes and so alleges, is embraced in the list of property claimed by the plaintiffs in their complaint in this action.

(c) That, pursuant to the instructions given to this answering defendant by the plaintiff in said action, and by the United States Commissioner and ex officio Justice of the Peace aforesaid, said attachment was levied and this answering defendant placed a keeper in charge of said property.

(d) That thereupon this answering defendant's authority ceased and was determined by the terms of his appointment, and this answering defendant has had nothing further to do with said property or any part thereof.

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Wherefore, this answering defendant prays that plaintiff take nothing by his said action against this answering defendant, and that this answering defendant go hence with judgment for his costs, and for such other and further relief as to the Court may seem meet and just in the premises.

McGOWAN & CLARK,

Attorneys for answering defendant.

(Duly verified.)

Due service hereof admitted this 18th April 1913.  
Cecil H. Clegg, Attorney for Plffs.



(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Apr. 18, 1913. C. C. Page, Clerk. By H. C. Green, Deputy.

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[Title of Court and Cause.]

**Separate Answer of H. K. Love.**

Now comes H. K. Love, one of the defendants in the above entitled action and answering for himself individually, for answer to plaintiffs' complaint on file in said action, admits, denies, and alleges as follows, to wit:

I.—Answering paragraph one of plaintiffs' complaint, this answering defendant alleges that he has no information or knowledge concerning the matters sets forth therein sufficient to form a belief, and basing his denial on such lack of information, denies each and every matter and thing therein contained.

II.—Answering the allegations of paragraph two of plaintiff's complaint, this answering defendant denies each and every matter therein set forth.

III.—Answering the allegations of paragraph three of plaintiff's complaint, this answering defendant denies each and every matter and thing therein set forth.

IV.—Answering the allegations of paragraph four of plaintiff's complaint, this answering defendant alleges that he has not sufficient knowledge or information to form a belief as to the value of the property referred to in said paragraph, and basing his denial on such lack of information and belief, denies each each and every matter and thing therein.

set forth.

V.—Answering the allegations of paragraph five of said plaintiffs' complaint, this answering defendant denies each and every matter and thing therein set forth.

VI.—Answering the allegations of paragraph six of plaintiffs' complaint, this answering defendant admits matters and things therein set forth.

---

This answering defendant, for a further and first separate answer and defense to plaintiffs' complaint, alleges as follows, to wit:

(a) That, during all the times hereinafter mentioned, this answering defendant was, and still is, the duly appointed, qualified, and acting United States Marshal for the Fourth Judicial Division of the Territory of Alaska.

(b) That, on or about the 11th day of June 1912, an action was duly commenced in the office of the United States Commissioner and ex officio Justice of the Peace for Fairbanks Precinct, at Chatanika, Fourth Judicial Division, Territory of Alaska, by J. E. Barrack as plaintiff, against The Russian Mining Company as defendant, which said action was numbered in said Court No. 43, to recover the sum of \$570.22, with costs of action, on an open account for goods sold and delivered.

(c) That thereafter and on said 11th day of June 1912, on application of the plaintiff in said action, Samuel R. Weiss, United States Commissioner and Justice of the Peace of the last above named Court,



in whose Court said action was instituted, determined that the plaintiff in said action was entitled to a writ of attachment, and thereupon a writ of attachment was duly given and made by the said Judge in said action, wherein and whereby this answering defendant, in his capacity as United States Marshal aforesaid, was commanded to attach and safely keep all the property of the defendants in said action, and did then and there, pursuant to the authority in him vested by the laws of the Territory of Alaska, appoint R. M. Courtney, one of the defendants herein, as a special officer to serve said writ.

(d) That thereafter, and on said 11th day of June 1912, said defendant R. M. Courtney, in his said capacity as special officer, pursuant to said writ of attachment and in the manner prescribed by law, levied on and attached all of the defendants' right, title, and interest in and to one lot of wood, one boiler house, and all the machinery contained therein, and in the mine of the said defendants, and on the surface of said mine, and on one mess-house, together with all provisions, ranges, cooking utensils, etc., contained therein, all being situate on Discovery claim on the Chatanika River, Fairbanks Precinct, Territory of Alaska, which said property is described as follows, to wit: about 75 cords more or less of wood; 1 hoist, double cylinder; 1 boiler, 18 horsepower; 1 carrier; 1 bucket; 1 trolley cable; 6 shovels; 4 picks; 8 point hoses; 5 gallons red oil; 12 ft. pick steel; 10 ft 5-8 iron; 18 ft. 1 in. pipe; 4 gallons benzine oil; 1 hack saw; 1 jack plane; 1 small hand drill;

36 dinner plates; 8 meat plates; 30 knives and forks; 30 tablespoons; 30 teaspoons; 12 soup bowls; 30 teacups; 30 saucers; 2 large meat trays; 2 mixing pans; 2 dish pans; 1 teapot; 1 coffee pot; 2 large meat pots; 1 flour sieve; 1 sirup can; 1 bread knife; 145 lbs. beef; 1 lb. coffee; 5 lbs. baking powder; 1 lb. tea; 6 one-gallon cans apples; 18 cans tomatos; 14 cans beets; 25 lb. box dried apples;  $\frac{3}{4}$  box Ivory soap; 3 sacks rolled oats; 9 cans fig pudding; 150 lbs bayo beans; 40 lbs small white beans; 16 pieces bacon; 5 lbs split peas;  $\frac{1}{2}$  gallon molasses; 27 cans cream; about 15 lbs sugar; 26 packages of corn starch; 50 lbs flour; 17 cans tomatos; 6 cans olive oil; 28 cakes Armour's white soap; 11 cans pumpkin; 5 lbs salt; 3 cans beets; 7 cans tomato catsup; about 15 lbs coffee; 1 box of candles; which said property, as this answering defendant is informed and believes and so alleges is embraced in the list of property claimed by the plaintiffs in their said complaint in said action, and placed a keeper in charge thereof, and held the same subject to the further order of said Court.

(e) That, thereafter, such proceedings were had in the action aforesaid, before the United States Commissioner above named, that a judgment was duly given and made in said action in favor of the plaintiff, and against the defendants therein, to wit, The Russian Mining Company, for the sum of \$570.22, with interest at the rate of 8 per cent per annum thereon until paid, together with costs, taxed in the sum of \$22.70, and ordered that execution is-

sue therefor.

(f) That, subsequent to the levy of said attachment as aforesaid, and prior to the sale of said property under execution as hereinafter set forth, defendant Courtney caused an inventory to be made of the property attached that was of a perishable nature, and ascertained that a portion of said property was of a perishable nature, said property being described as 145 lbs of beef, and thereafter, and on the . . . . . day of June, 1912, defendant Courtney caused said property of a perishable nature to be sold, in the manner prescribed by law, and said property was at said sale sold as defendant is informed and believes and so alleges to Paul Ringseth for the sum of approximately \$40.00, which said sum was by defendant Courtney paid to the Commissioner, who deducted his fees therefrom and delivered the balance \$34.34 to this debt., who held same subject to the final determination of said cause and proceedings taken subsequent to trial.

(g) That, thereafter and on the 21st day of June 1912, the United States Commissioner and ex officio Justice of the Peace aforesaid, pursuant to said judgment and in the manner prescribed by law, duly gave and issued an execution, which was directed to this answering defendant in his capacity as United States Marshal as aforesaid, which said execution directed this answering defendant to levy on, seize, and take into his possession sufficient of the real or personal property of the defendants in said action, to wit, The Russian Mining Company, to satisfy said judgment,



together with interest, costs, and increased costs, and to sell the same in the manner prescribed by law.

(h) That, thereafter and on the 24th day of June 1912, said writ of execution was delivered to this answering defendant, and this answering defendant, under and by virtue of the the execution aforesaid, thereafter and on the 26th day of June 1912, levied on all the personal property theretofore attached by said R. M. Courtney, save such as was already sold as perishable property as hereinbefore set forth, which said property, as this answering defendant is informed and believes and so alleges, is embraced in the list of property described in the plaintiff's complaint, and advertised the same for sale in the manner prescribed by law, and thereafter and on the 23d day of July 1912, at Discovery claim on the Chatanika River aforesaid, sold all the right, title, and interest of said defendant, the Russian Mining Company, in, to, and out of the property levied on by defendant herein, as aforesaid, save and except such as had been previously sold as perishable property, as described in paragraph (f) of this separate affirmative answer and defense, to J. E. Barrack, the plaintiff in said action, and Paul Ringseth for the sum of \$667.00, they being the highest bidders therefor, and said sum being the highest and best bid made at said sale which said sum, together with the amount realized from the sale of the perishable property, as aforesaid, less the amounts deducted by defendant herein as his fees in his capacity as United States Marshal aforesaid, was credited and applied

in satisfaction of the judgment and execution aforesaid, or so much thereof as was necessary so to be applied, leaving a balance in the hands of this answering defendant of \$90.60.

(i) That, as this answering defendant is informed and believes and so alleges, at the time of the levy of the attachment aforesaid, the said property so levied on and sold by him as aforesaid was in the exclusive possession of the Russian Mining Company, the defendant in the action hereinbefore particularly described, and it was the true owner thereof at all said times, and said property at the time of the levy of said execution was in the possession of this answering defendant as United States Marshal of the Fourth Judicial Division of the Territory of Alaska.

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For a second further and separate affirmative answer and defense, this answering defendant alleges:

(a) That, during all the times hereinafter mentioned, this answering defendant was, and still is, the duly appointed, qualified, and acting United States Marshal for the Fourth Judicial Division of the Territory of Alaska.

(b) That, on or about the 11th day of June 1912, an action was duly commenced in the office of the United States Commissioner and ex officio Justice of the Peace for Fairbanks Precinct, at Chatanika, Fourth Judicial Division, Territory of Alaska, by C. E. Danforth (J. E. Barrack, Assignee), as plaintiff,

against The Russian Mining Company as defendant, which said action was numbered in said Court No. 44, to recover the sum of \$437.50, with costs of action, on an open account for professional services, medicines and supplies furnished, and and an assigned account of one Paul Ringseth.

(c) That, thereafter and on the said 11th day of June 1912, on application of the plaintiff in said action, Samuel R. Weiss, United States Commissioner and Justice of the Peace of the last above named Court, in whose Court said action was instituted, determined that the plaintiff in said action was entitled to a writ of attachment, and thereupon a writ of attachment was duly given and made by the said Judge in said action, wherein and whereby this answering defendant, in his capacity as United States Marshal aforesaid, was commanded to attach and safely keep all the property of the defendants in said action, and did then and there, pursuant to the authority in him vested by the laws of the Territory of Alaska, appoint R. M. Courtney, one of the defendants herein, as a special officer to serve said writ.

(d) That thereafter and on said 11th day of June 1912, said defendant R. M. Courtney, in his said capacity as special officer, pursuant to said writ of attachment and in the manner prescribed by law, levied on and attached all of the defendants' right, title, and interest in and to one lot of wood, one boiler house, and all the machinery therein contained, and in the mine of the said defendants, and



on the surface of said mine, and on one mess-hause, together with all provisions, ranges, cooking utensils, etc., contained therein, all being situate on Discovery claim on the Chatanika River, Fairbanks Precinct, Territory of Alaska, which said property is described as follows, to wit: about 75 cords more or less of wood; 1 hoist, double cylinder; 1 boiler, 18 horse-power; 1 carrier; 1 bucket; 1 trolley cable; 6 shovels; 4 picks; 8 point hoses; 5 gallons red oil; 12 ft. pick steel; 10 ft  $\frac{5}{8}$  iron; 18 ft 1 in pipe; 4 gallons benzine oil; 1 hack saw; 1 jack plane; 1 small hand drill; 36 dinner plates; 8 meat plates; 30 knives and forks; 30 tablespoons; 30 teaspoons; 12 soup bowls; 30 tea-cups; 30 saucers; 2 large meat trays; 2 mixing pans; 2 dish pans; 1 teapot; 1 coffee pot; 2 large meat pots; 1 flour sieve; 1 sirup can; 1 bread knife; 145 lbs. beef; 1 lb coffee; 5 lbs baking powder; 1 lb. tea; 6 1-gallon cans apples; 18 cans tomatos; 14 cans beets; 25 lb. box dreid apples;  $\frac{3}{4}$  box Ivoery soap; 3 sacks rolled oats; 9 cans fig pudding; 150 lbs. bayo beans; 40 lbs small white beans; 16 pieces bacon; 5 lbs split peas;  $\frac{1}{2}$  gallon molasses; 27 cans cream; about 15 lbs sugar; 26 packages corn starch; 50 lbs flour; 17 cans tomatos; 6 cans olive oil; 28 cakes Armour's white soap; 11 cans pumpkin; 5 lbs salt; 3 cans beets; 7 cans tomato catsup; about 15 lbs. coffee; 1 box candles; which said property, as this answering defendant is informed and believes and so alleges, is embraced in the list of property claimed by the plaintiffs in their said complaint in said action, and placed a keeper in charge thereof,

and held the same subject to the further order of said Court.

(e) That, thereafter, such proceedings were had in the action aforesaid, before the United States Commissioner and ex officio Justice of the Peace above named, that a judgment was duly given and made in said action in favor of the plaintiff and against the defendants therein, to wit, The Russian Mining Company, for the sum of \$437.50, with interest at the rate of 8 per cent per annum thereon until paid, together with costs, taxed in the sum of \$22.70, and ordered that execution issue therefore.

(f) That, thereafter and on the 21st day of June 1912, the United States Commissioner and ex officio Justice of the Peace aforesaid, pursuant to said judgment and in the manner prescribed by law, duly gave and issued an execution, which was directed to this answering defendant in his capacity as United States Marshal as aforesaid, which said execution directed this answering defendant to levy on, seize, and take into his possession sufficient of the real or personal property of the defendants in said action, to wit, The Russian Mining Company, to satisfy said judgment, together with interest, costs and increased costs, and to sell the same in the manner prescribed by law.

(g) That, subsequent to the rendition of said judgment, in favor of said C. E. Danforth and against said Russian Mining Company, as this answering defendant is informed and believes and so alleges, said C. E. Danforth, for a valuable consideration sold



and assigned the judgment so rendered in his favor as aforesaid to J. E. Barrack, who thereupon became the owner thereof.

(h) That thereafter this answering defendant, under and by virtue of the judgment and execution aforesaid, in said cause of C. E. Danforth vs. Russian Mining Company, and on the 26th day of June 1912, levied on the personal property theretofore attached in the said cause of C. E. Danforth vs Russian Mining Company, as hereinbefore described, not previously sold as perishable property and advertised the same for sale in the manner prescribed by law, which said levy of said execution was subsequent to the levy of execution in the case of J. E. Barrack vs. The Russian Mining Company, particularly described in this answering defendant's first affirmative answer and defense, and thereafter and on the 23d day of July 1912, after the sale by this answering defendant of said personal property theretofore attached under and by virtue of the writ of attachment in said cause of C. E. Danforth vs The Russian Mining Company, under a prior judgment and execution in favor of J. E. Barrack, and after the satisfaction of said judgment in the case of J. E. Barrack vs. The Russian Mining Company, all of which is particularly referred to in this answering defendant's first affirmative answer and defense, to which reference is hereby specifically made for further particulars, this answering defendant had in his possession a surplus of \$90.60, which said sum this answering defendant, after deducting the fees:

and expenses allowed to him by law, in his capacity as United States Marshal as aforesaid, applied on the said judgment of C. E. Danforth (J. E. Barrack, assignee) vs. The Russian Mining Company.

(i) That, as this answering defendant is informed and believes and so alleges, at the time of the levy of the attachment aforesaid, the said property so levied on and sold by him as aforesaid was in the exclusive possession of the Russian Mining Company, the defendant in the action hereinbefore particularly described, and it was the true owner thereof at all said times, and said property, at the time of the levy of said execution, was in the possession of this answering defendant as United States Marshal of the Fourth Judicial Division of the Territory of Alaska.

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For a third further and separate affirmative answer and defense, this answering defendant alleges:

(a) That, as answering defendant is informed and believes, and basing his allegation on such information and belief alleges, on or about the 29th day of April 1912, certain of the copartners constituting a part or all of the copartnership known as the Russian Mining Company executed an instrument, purporting to convey to one C. H. Ward certain of the personal property described in plaintiffs' complaint, to wit: one hundred cords of sixteen and four foot wood, one ten-horsepower American hoist, pipes, hose, fittings, and also one bucket, carrier, and bucket block, and also all cables, together with

all flumes and sluice-boxes, cooking range, dishes, etc., situate on claim No. One below Discovery on the Chatanika River, Fairbanks Precinct, Territory of Alaska.

(b) That, at said time, no actual transfer of said property was made to said C. H. Ward, and the possession of said property remained in the alleged assignors;

(c) That said Russian Mining Company, at said time, was largely indebted to other creditors, and as answering defendant is informed and believes and so alleges, the said pretended transfer was made for the purpose of defeating and defrauding the other creditors of said Russian Mining Company and was fraudulent and void.

(d) That, as answering defendant is informed and believes and so alleges, on or about the 11th day of June 1912, the said Russian Mining Company was indebted to J. E. Barrack and C. E. Danforth, and to other general creditors, whose names are unknown to this answering defendant, in large sums of money, and was also indebted to certain laborers employed by the said Russian Mining Company, and that, on said 11th day of June 1912, at an hour subsequent to the levy of the attachment on the property of said Russian Mining Company in the suit of J. E. Barrack and the suit of C. E. Danforth, as alleged in answering defendant's first affirmative answer and defense hereinabove set forth, the said Russian Mining Company, for the purpose of hindering, delaying, and defrauding the said J. E. Bar-



rack, C. E. Danforth, and other existing creditors, caused said C. H. Ward to execute a pretended assignment or release of the property, theretofore pretended to be transferred to him on the 29th day of April 1912, to the plaintiffs herein.

(e) That, at the time said pretended assignment was executed, attachments had already been levied on said property in the suits of J. E. Barrack and C. E. Danforth, as hereinbefore alleged, and said property was then actually in the possession of this answering defendant in his capacity as United States Marshal, by virtue of said property being in the possession of a keeper appointed by special officer Courtney in the suits of J. E. Barrack and C. E. Danforth against said Russian Mining Company, as hereinabove set forth.

(f) That said Russian Mining Company, on the said 11th day of June 1912, and for a long time prior thereto, was insolvent, and said pretended assignment was made for the purpose and with the intent and design of hindering, delaying, and defrauding other creditors of said Russian Mining Company, and to give the plaintiffs in this action a preference over said general creditors of said Russian Mining Company.

(g) That, as answering defendant is informed and believes and so alleges, at all times from the said 29th day of April 1912 up to and including the 11th day of June 1912, the property so pretended to be assigned to C. H. Ward as aforesaid, and by him afterwards pretended to be assigned to the plaintiffs in

this action, was in the actual possession of said Russian Mining Company, and was being used by it in carrying on its mining operations on Discovery claim on the Chatanika River aforesaid, and no actual or continued change of possession of said property ever took place until such time as said property was taken possession of by this answering defendant, in his capacity as United States Marshal, through special officer Courtney, on the 11th day of June 1912, as hereinbefore alleged.

(h) That the plaintiffs have never been in possession of said property or any part thereof, and have no valid real or pretended claim against any part of said property described in plaintiffs' complaint, and the only property that was ever pretended to be transferred to them was the property described in the fraudulent bill of sale of 29 April 1912, made to said C. H. Ward.

(i) That, subsequent to said alleged assignment, said Russian Mining Company used a portion of said wood described in said pretended bill of sale until the 11th day of June 1912, at which time there only remained of said wood, pretended to have been transferred, about seventy five cords.

(j) That, as answering defendant is informed and believes and so alleges, the greater part of the groceries, etc., described in plaintiffs' complaint, was purchased by said Russian Mining Company subsequent to the alleged transfer to C. H. Ward on the 29th day of April 1912.

(k) That said alleged transfers of 29 April 1912

and 11 June 1912 were, as respects J. E. Barrack and C. E. Danforth, null and void, and plaintiffs and their alleged predecessor in interest have never been in either the actual or constructive possession of said property described in plaintiffs' complaint, or any part thereof.

For a fourth further and separate affirmative answer and defense, this answering defendant alleges:

(a) That no trust was ever created in plaintiffs herein by any instrument in writing, as prescribed by law, and any claims made by plaintiffs in this action as trustees for any persons whomsoever are without right and are void, as no trust was ever created or existed in the manner prescribed by law.

WHEREFORE: This answering defendant prays that plaintiffs take nothing by their said action and that this answering defendant have judgment for costs against said plaintiffs, and for such other and further relief as is meet and just in the premises.

McGOWAN & CLARK,

Attorneys for answering defendant.

(Duly verified.)

Due service hereof admitted this 18th April 1913.

Cecil H. Clegg, Attorney for Pltffs.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Apr. 18, 1913. C. C. Page, Clerk. By H. C. Green, Deputy.

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[Title of Court and Cause.]

**Reply to Answer of Defendant Courtney.**

Come now the plaintiffs herein and for reply to the



separate answer of defendant R. M. Courtney:

1. Deny all of the allegations contained in paragraphs A, B, C and D of the first further and separate answer and defense of said defendant R. M. Courtney contained in his said answer, and the whole of each of said paragraphs.

2. Deny each of the allegations contained in paragraphs A, B, C and D of the further and second separate answer and defense of said defendant R. M. Courtney contained in said separate answer, and the whole of each of said paragraphs.

CECIL H. CLEGG,

Attorney for plaintiffs.

Received service of a copy of the foregoing reply this 24 day of April, and I hereby waive verification thereof at this time and agree that the same may be verified by one of the plaintiffs at any time before trial.

McGOWAN & CLARK, By R. H. G.,

Attorneys for defendant Courtney.

(Indorsed): Filed April 24th, 1913. C. C. Page, Clerk. By P. R. Wagner, Deputy.

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[Title of Court and Cause.]

**Reply to Answer of Defendant Love.**

Come now plaintiffs herein and for reply to the separate answer of the defendant H. K. Love, filed herein, allege as follows:

I.

(1) Deny each and all of the allegations contained in paragraphs B and C of the first further and sep-

arate answer and defense of said defendant H. K. Love contained in said answer, and the whole of each of said paragraphs.

(2) Deny each and all of the allegations contained in paragraph D of the said first and further separate answer and defense of said defendant H. K. Love, except the allegation that the property described in said paragraph is embraced in the list of personal property claimed by the plaintiffs in their complaint in said action.

(3) Deny each and all of the allegations contained in paragraphs E, F, G, H and I of the said first and separate answer and defense of said H. K. Love, defendant, contained in said answer, and the whole of each of said paragraphs.

## II.

Further replying to the separate answer of defendant H. K. Love and to the second further and separate affirmative answer and defense therein contained, plaintiffs herein,

(1) Admit the allegations contained in paragraph A thereof.

(2) Deny each and all of the allegations contained in paragraphs B and C of said second and further separate and affirmative defense contained in said answer, and the whole of each of said paragraphs.

(3) Deny each and all of the allegations contained in paragraph D of said second further affirmative defense contained in said answer, except the allegation that the personal property enumerated in said paragraph is embraced in the list of property



claimed by the plaintiffs in their said complaint in said action.

(4) Deny each and all of the allegations contained in paragraphs E, F, G, H and I of said second further and separate answer of defendant contained in said answer, and the whole of each of said paragraphs.

### III.

Replying to the third further and separate affirmative answer and defense of the said defendant H. K. Love, contained in said separate answer filed herein, plaintiffs herein,

(1) Deny each and all of the allegations contained in paragraphs A, B, C, D, E, F, G, H, I, J and K of said third further and separate answer and defense of said defendant contained in said answer, and the whole of each of said paragraphs.

### IV.

Replying to the fourth further and separate answer and defense of said defendant H. K. Love, contained in said answer, plaintiffs herein,

(1) Deny each and all of the allegations contained in paragraph A thereof, and the whole of said paragraph.

### V.

Further replying to the matters and things set forth in said separate answer and defense of the said H. K. Love, plaintiffs herein allege:

(1) That at the time of the institution of each of the actions mentioned in said answer, and of the issuance of the writs of attachment and execution

mentioned therein, said Russian Mining Company had no right, title or interest in any or to any of the personal property described in plaintiff's complaint and in paragraph D of the first further and separate answer and defense of said defendant.

(2) That the said Samuel R. Weiss, Commissioner and Ex-officio Justice of the Peace, Fairbanks Precinct, at Chatanika, Fourth Judicial Division, Alaska, had no legal authority to issue said writs of attachment or said writs of execution mentioned in said answer, and that each of said writs were illegal and void.

(3) That said Samuel R. Weiss, acting as Commissioner and Justice of the Peace aforesaid, had no jurisdiction over the defendant Russian Mining Company in either of said causes mentioned in said answer, and had no authority to appoint said defendant R. M. Courtney as a special officer to serve any process in either of said causes, and that the pretended appointment of said R. M. Courtney was illegal and void.

WHEREFORE, plaintiffs pray judgment against defendant as prayed for in their complaint herein.

CECIL H. CLEGG,

Attorney for Plaintiff.

Received service of a copy of the foregoing Reply this 24 day of April, 1913, and I hereby waive verification thereof at this time and agree that the same may be verified by one of the plaintiffs at any time before trial.

McGOWAN & CLARK,

By R. H. G.

Attorneys for Defendant H. K. Love.

(Indorsed): Filed April 24th, 1913. C. C. Page, Clerk. By P. R. Wagner, Deputy.

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[Title of Court and Cause.]

**Bill of Exceptions.**

BE IT REMEMBERED that this cause came on regularly for trial before Honorable Frederic E. Fuller, judge of said court, at 10 o'clock A. M. on November 13, 1913, Cecil H. Clegg, Esq., appearing as attorney for plaintiffs, and Messrs. McGowan & Clark as attorneys for defendants. Proceedings were regularly had to empanel a jury, and twelve men, after being sworn on voir dire, and examined and accepted by the respective parties, were sworn as the jury to try the case. Mr. Clegg made an opening statement in behalf of plaintiffs, and Mr. Clark made an opening statement in behalf of defendant, when the following proceedings were had and testimony was taken:

BAPTISTE SERAFINO, a witness for plaintiffs, after being first duly sworn, testified substantially as follows, upon

**DIRECT EXAMINATION BY MR. CLEGG:**

My name is Baptiste Serafino; I am engaged in the business of mining; I have lived in the Fairbanks country about seven years; I know the Russian Mining Company, worked for them on 1 below Discovery, Chatanika; I remember the time they closed down work, on or about June 10; on the morning of the 11th they said they were going to shut down, they paid off some of the men—some of their



friends and nobody else; almost everybody they didn't pay, when we found that we couldn't get our wages, went to see Mr. Ward—practically all the laborers, eight or ten or eleven, I do not remember how many; two members of the Russian Mining Company went with us and we went to Ward's place.

Q. What was done there? What took place there at Ward's place?

A. It took place—Ward and the Russian Mining Company, they turned over the bill of sale to us of the property; wood and Machinery, and—(Interrupted)

MR. CLARK: We object as a conclusion. It speaks for itself. It is in writing.

MR. CLEGG: Did he have the bill of sale there?

A. Yes sir.

Q. Do you think you would recognize it if you saw it?

A. Yes sir, I do.

Q. Is that the bill of sale (Hands paper to witness).

A. Yes sir. Ward wrote that out while we were there; two members of the Russian Mining Company were there and agreed to it; I know Nick Chakoff's signature; the paper is not in his writing, but I recognize his signature to it; I also recognize Kosma Milakoff's signature to the instrument; also Walter Rosin's; I saw Mr. C. H. Ward sign this bill of sale.

Said bill of sale was then admitted in evidence, marked Plaintiff's Exhibit 1, and is as follows:



**"KNOW ALL MEN BY THESE PRESENTS:**  
That I, N. Choff (Nick Chakoff), Walter Rosin, Mike Larkin, John Urik, Paul Williams, K. Marakoff, John Robin, A. Nolkin, C. Suthoff, and L. Kuczynski The Russian Mining Co. the party of the first part, for and in consideration of the sum of Sixteen Hundred and twenty five dollars lawful money of the United States of America, to us in hand paid by C. H. Ward, the party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the said party of the second part—executors, administrators and assigns Two (2) hundred cords of sixteen and four foot wood one (1) ten (10) horse power American Hoist, pipes, hose, points, fittings and also one (1) bucket and carrier and bucket block and also all cables, together with all flume and sluice boxes belonging to us, also cooking range, dishes ect this property is situated on No One below Discovery Chatanika flats.

**TO HAVE AND TO HOLD** the same to the said party of the second party,—executors, administrators and assigns forever. And—do for his heirs, executors, administrators, covenant and agree to and with the said party of the second party executors, administrators and assigns, to warrant and defend the sale of the said property, goods and chattels hereby made unto the said part—of the second party, executors, administrators and assigns, against all and every person and persons whomsoever lawfully claiming or to claim the same.

**IN WITNESS WHEREOF** —ha—hereunto set

Nick Chakoff    Walter Rosin (seal)

Maik Larkin

Russian M. C.

James M White

Territory of Alaska ss.

WITNESS my hand and official seal the day and  
year in this certificate first above written.

SAMUEL R. WEISS

Commissioner and ex-officio Justice of the Peace." "Chatanike, Alaska, June 11, 1912, 1, the undersigned holding a bill of sale of mining property described in this bill of sale, do hereby release said property to the following laborers of the Russian Mining Company. They are to hold wood and machinery for wages due them. This release is given to Robert

Serafino and Tom P. King who act as trustees for the others. Witness: James M. White.

C. H. WARD."

The part read was written by Mr. Ward, in the presence of the laborers and two members of the Russian Mining Company I have mentioned before, none of whom made any objection and all of whom were satisfied with it; King and myself agreed to act as trustees, and the others said they were satisfied to have us act as trustees no-one made any objections; there was no other paper written by the Russian Mining Company at that time that I know of.

Q. I hand you this paper which I have in my hand now, and which I ask to have marked Plaintiffs' Exhibit B.

A. Oh, yes. That was—(Interrupted)

THE COURT: You were asked to look at it.

MR. CLEGG: Q. Who signed that paper there?

A. The Russian Mining Company and Joe Ward.

Q. You see that signature there? A. Yes.

Q. Whose signature is that?

That is the signature of one of the members of the company, Nick Chakoff; the other is Walter Rosin; the next signature is mine and the next is King's; we were all there when it was signed and I saw all of them sign it.

Q. State when it was signed with reference to the time this Bill of Sale was signed?

A. Yes sir, the same time.

Q. What time of day was that?

A. On the 11th of June, 1912.



Q. What time of the morning?

A. About 11 o'clock.

Q. Where were you? A. In Ward's cabin.

MR. CLEGG: I would like to offer this in evidence. (Marked Plaintiff's Exhibit 2)

MR. CLEGG: (reads Plaintiff's Exhibit 2 as follows:)

"Chatanika, Alaska, June 11th, 1912. Bill of Sale. This is to certify that the Russian Mining Company has turned over the cook house and groceries to laborers for wages including cook house and cooking utensils and grub and range.

Russian Mining Company: Nick Chakoff, Walter Rosin.

Trustees: Baptiste Serafino, T. P. King.

Witness: John F. Erickson, R. M. Courtney."

Q. Now, state what you did under those instruments as trustees that same day.

A. Well, we went down on the claim and took possession of it.

MR. CLARK: We object to that as a conclusion, and ask that it be stricken.

THE COURT: The answer may stand.

MR. CLARK: We save an exception.

MR. CLEGG: Q. How many of you went down there?

A. All of us.

Q. All of the laborers? A. Yes sir.

Q. And when did the Russian Mining Company leave there?

A. Some left that day, and some the next day.



Q. Did they attempt to do anything with this property after they turned it over to you?

A. Who, the Russian Mining Company?

Q. Yes sir.      A. No sir.

Q. What did you do when you got down there, you and the rest of the men.

A. We started to gather up everything.

Q. Did you commence to make a list of it?

MR. CLARK: We object to the leading questions.

MR. CLEGG: Q: What did you commence to do?

A. Well, we tried to take a list of that stuff that was left there. Well, take—estimate the things.

Q. Took a rough estimate?      A. Yes sir.

Q. Of the list of stuff that was there.      A. Yes sir.

Q. How long were you down there undisturbed in the possession of the property?

MR. CLARK: We object, as calling for a conclusion.

MR. CLEGG: Q. How long were you allowed to remain there?

A. We was there the whole day.

Q. Did you see anybody else around there that day.

A. Well, I see Mr. Courtney—marshal Courtney. He came and served those attachments.

Q. What time of day was that?

A. That was about 1 o'clock.

Q. About one o'clock?      A. Yes sir.

Q. How long did you continue to stay there?

A. Well, we was going to stay as long as we could, but the day after that we was in the mess house and

he came and take the grub away from us; and we were all going to stop him but he said he had an order of the court, so we though we couldn't do anything with him at all.

Q. And you left there.

A. No. Well, we didn't have anything to eat, so we had to leave there.

Q. You didn't do anything more with the property. A. No, I didn't.

Q. What property was there there at the time you went down there after Ward signed these papers?

MR. CLARK: We object as immaterial. The property that is alleged was turned over to them is specifically described in a written agreement. In their complaint they allege a lot of property that is not in their alleged bill of sale, and we object to any testimony about any property except what they allege was turned over to them.

THE COURT: Is that the only way which you claim to have acquired a right of possession, through these bills of sale?

Mr. CLEGG: Yes sir. Through taking possession of it.

THE COURT: Through the bills of sale you have here?

Mr. CLEGG: Yes sir.

THE COURT: You can show that you took possession of the property mentioned in the bill of sale.

MR. CLARK: But the question he is asking is: what other property was there.

THE COURT: You may ask him to describe the property he claims here. Of course, if there is more than he has title to, it can be disregarded.

MR. CLEGG: What was there, calling your attention to special items.

A. I couldn't make more than one hundred cords, more or less.

Q. What was there in the way of machinery?

A. The machinery was—I should say a 20 or 25 horse power boiler, and about an 8 horse power hoist.

Q. Was that what you call a double cylinder hoist?

A. Yes sir.

Q. An 18 horse power boiler?

A. No, a 20 horse power boiler, or 25 maybe, and of course there was all kind of fittings there.

Q. What about the carrier?

A. Carrier and bucket and pipes, cables, and so on. I have been running machinery for the last ten or twelve years; I can estimate the value of machinery, have had occasion to handle buy, and sell mining machinery, carriers, hoists and boilers during that time and from my experience would estimate that the hoist was worth about \$250.00 or \$300.00, the boiler, about \$500.00, the carrier, about \$50.00; the bucket was pretty old, worth about \$40.00; the trolley cable, about \$50.00, the wood, about \$10.00 per cord. While working for the Russian Mining Company, I was foreman in charge of the active mining operations.

“Q. You were telling the court and jury this morning what took place up there at Ward's on the morn-



ing of the 11th of June. Did you at that time get any statement from Nick Chako , or the Russian Mining Company, of the names of the men and the amounts due them at that time? A. Yes sir.

Q. I will ask you to examine this paper here (Hands same to witness) and state whose signature that is at the bottom of it.

A. Yes sir, that is Mike and Walter Rosin's.

Q. Were they the active members of the company there.

A. Yes sir, they are supposed to be the head men.

Q. State when you received this statement from them?

A. Well, I received that, I think it was, on the 8th or 11th of June.

Q. Were you, as foreman, familiar with the amounts that were due the workmen there at that time. A. How is that?

Q. Were you, as foreman, familiar with the amounts that were due the workmen there at that time. A. Yes sir.

MR. CLEGG: I am going to offer that in evidence.

MR. CLARK: Is this in the English language?

MR. CLEGG: No.

MR. CLARK: What is it in?

MR. CLEGG: Russian.

MR. CLARK: We object as unintelligible.

THE COURT: If you offer it, you may furnish a translation of it. I think you should furnish a translation of it before it is offered.



MR. CLARK: Let me question him a little before it is offered.

Q. What is this first name at the top?

A. I can't make that out any more than you can.

Q. That is not a man's name?

A. Yes sir, it is a man's name.

Q. Do you know what that amount shows there?

A. No, I couldn't say.

Q. Then you don't know whether those were wages due to that man?

A. I know that, but I couldn't place every man that was there.

Q. What is the first word there?

A. (Witness pronounces a word unintelligible to reporter)

Q. Who is he?

A. Well, I will tell you. I was the foreman there, but the firm was taking the time, I wasn't taking the time.

Q. Do you know that this man worked there?

A. Yes.

Q. That man whose name is down there first, did he ever come to you and ask you whether you were going to get his money for him? A. Yes sir.

Q. Do you know him?

A. Yes, I know him if I see him.

Q. There was such a man as that, was there?

A. Yes sir.

Q. How long had he been working there?

A. He done enough work for that amount of money.

Q. That is not the question. How long had he been working there?

A. He had been working four or five months that I know of.

Q. There was such a man as that there?

A. Yes sir.

Q. Are all these other names, names of men?

A. Yes sir.

MR. CLEGG: Do you still object to the introduction of this?

MR. CLARK: I think we can let it go if counsel will submit a translation before the case is submitted. There is no objection at the present time.

THE COURT: Very well.

MR. CLEGG: Q. How much was due you as foreman? A. \$10 a day.

Q. What was the amount?

A. \$200. "I do not remember how much was due Mr. Fowler, as he worked there before I worked there. I didn't keep the time, one of the firm always kept the time. I do not know how much was due Carl Post. The statement you have shown was given me by Nick Chakoff and Walter Rosin, the men who signed it.

OBJECTION by MR. CLARK that the amount set after the names of the men in the statement were not proof that said amounts were due and were hearsay.

"THE COURT: It may be introduced as a paper that was given to him at that time; but it is not evidence of the amounts contained in it as being due to the different men, without further testimony.

MR. CLEGG: You may cross-examine.

CROSS-EXAMINATION.

By MR. CLARK: Q. You and your partner Mr. King were trustees; you were to hold this property for all of the laboring men, were you not?

A. Yes sir.

Q. And if the Russian Mining Company paid one of these men after this time, you didn't have to pay him anything did you? A. I don't think so.

Q. So you were holding this property to secure the amounts that were due to these men.

A. Yes sir.

Q. You were not holding it for any other purpose. A. No sir.

Q. And if the Russian Mining Company paid off these men themselves, then you wouldn't be claiming the property, would you? A. I should say not.

Q. All you wanted was to get your money out of it. A. Certainly.

Q. You don't know whether the Russian Mining Company ever paid any of these men since that time. A. Yes. I know that.

Q. You know some of them have been paid, don't you?

A. No sir. I know two of them that have been paid, but they are not there.

Q. Do you know of any of the men that are on here that have been paid?

A. I am positively sure they didn't pay anybody else.

Q. You are positive of it? A. Yes sir.



Q. Do you know whether or not any suits have been started down here in the lower court?

MR. CLEGG: We object as not cross-examination.

THE COURT: Objection overruled.

MR. CLARK: Q. You know, don't you, that two members of the Russian Mining Company have recently filed a petition to go through bankruptcy?

A. Yes sir.

Q. You know, don't you, that some of the working men that you were trustees for, attached some of the wages of the Russian Mining Company since the property was turned over to you? A. Yes sir.

Q. And you know that they have got their money, don't you? A. They got part of it.

Q. You don't know how much they got.

A. No, not exactly.

Q. Are they included in your list here?

A. Show me the list and I can say. I know the fellows.

Q. This was a full list of all the wages that were due at that time? A. Yes sir.

Q. Since that, some of them have attached and got some of their money. A. Only one attached.

Q. Which one is it that attached? (Hands paper to witness)

A. I can't see him here. That is a Jap that attached one of the laymen, and his name is not here at all. That is about the only man I could recognize, and Sam Fowler, and that is all. He is not there.

Q. Those people might have attached, and you not



know it. A. Yes it might have been so.

Q. And the Russian Mining Company, or the members of the Russian Mining Company, might have gone to almost any of these men and paid them off, and you not know about it. A. Yes sir.

Q. So, all that you know personally yourself is that there is \$200 due to you. A. Yes sir.

Q. And you don't know how much is due to any of the other men. A. The list shows.

Q. But outside of what they told you was due.

A. Yes I got that list from the—:(Interrupted)

Q. You don't know.

A. I got that list from the time keeper.

Q. He told you this was right. A. yes sir.

Q. You don't know of your own knowledge that this list is correct. A. I am almost sure.

Q. All you know is what the time keeper told you.

A. Yes. "The time-keeper was Walter Rosin, a member of the firm.

"Q. Now, when Mr. Ward wrote on this bill of sale that was introduced in evidence this morning, that was the only property that Ward turned over to you, or that you say he turned over to you, wasn't it?

A. Yes sir.

Q. Just what is described in that. A. Yes.

Q. Then there was another paper that was introduced in evidence, this blue paper here (Plaintiff's Exhibit 2). A. Yes sir.

Q. That was given to you by the Russian Mining Company. A. Yes sir.

Q. Was this blue paper, Plaintiffs' Exhibit 2, signed by the Russian Mining Company at the same time that this other instrument marked Plaintiffs' Exhibit 1?      A. Yes sir.

Q. All signed at the same time?      A. Yes sir.

Q. And all of you were together there in the cabin?      A. Yes.

Q. And you had not gone out and taken possession of the property before that, had you?

A. Not before I got the bill of sale.

Q. And everybody that signed here, the Russian Mining Company, and yourself, and the witnesses—they all signed at the same time, did they?

A. Yes sir.

Q. They were all there at the time the signing was done?      A. Yes sir.

Q. What time of the day was that?

A. That was along about 11 o'clock.

Q. What time did Mr. Courtnay come down there and levy the attachments?

A. Well, I am not positively sure, but I think it was 1 o'clock.

Q. When was the first time you had seen Mr. Courtnay that day? when he came down to levy the attachments?

A. Well, I saw him about 12 o'clock around town.

Q. But he was not down at the works; he was not down on the ground,—      A. No sir.

Q. —until the time he levied the attachments.

A. No sir.

Q. What did he do when he came down and levied

the attachments?

A. Just stuck up the notices. That is all.

Q. Just stuck the notices up? A. That is all.

Q. Did he give any papers to anybody?

A. No sir.

Q. How many notices did he put up?

A. About three I guess, three or four.

Q. Did you have any talk with him up town when you were up there before that? A. No sir.

Q. He put up three or four notices around. He put some up on the wood, did he? A. Yes sir.

Q. And he put some up, on the boiler house?

A. Yes.

Q. Where else did he put up the notices?

A. On the house and the cabin.

Q. On the house itself?

A. On the house and the cabin.

Q. Did you see him give any papers to any member of the Russian Mining Company? A. No sir.

Q. You are certain he was not there before 1 o'clock. A. I think it was that way.

Q. You feel certain he was not there until after these bills of sale had been given?

A. I don't think so.

Q. If he had been there you would have known it, wouldn't you? A. Certainly.

Q. Did you know Mr. Cournay very well.

A. Yes sir.

Q. If he had been around the works before he came down and levied the attachments, you would have seen him. A. Yes sir, certainly.



Q. You are certain he was not there. A. Yes sir.

Q. How many of you were present in the cabin at the time the bills of sale were made out?

A. The whole crew?

Q. And the members of the Russian Mining Company too. A. Yes sir.

Q. Who wrote out this bill of sale?

A. Joe Ward himself.

Q. Joe Ward? A. Yes sir.

Q. The Bill of Sale marked Plaintiffs' Exhibit 1?

A. Yes, Joe Ward wrote it.

Q. And signed it? A. Yes sir.

Q. Did he also write out this other bill of sale on the blue paper marked Plaintiffs' Exhibit 2?

A. Yes sir.

Q. And you are certain that that was written at the same time that Joe Ward wrote Plaintiff's Exhibit 1. Plaintiffs' Exhibit 2, on the blue paper, you think was written at the same time as Plaintiffs' Exhibit 1?

A. Well, I think it was the same time.

Q. Now, just think again. Isn't it a fact that this plaintiffs' Exhibit 2—That wasn't given to you, was it, until after the marshal had been down there and put up his attachment papers?

A. No sir, they gave me that before.

Q. You are certain it was before? A. Yes sir.

Q. Examine the witness' signatures there and see if you do not find the name of R. M. Courtney there at the bottom, right down here at the bottom, the last name "R. M. Courtney".



MR. CLEGG: That is illegible to me. He cant make it out.

MR. CLARK: You will admit that is his signature?

MR. CLEGG: Yes, I will admit that it is, but the witness couldn't figure the name of Courtney out of that.

MR. CLARK: It is admitted that that name there is R. M. Courtney. A. I guess it is.

Q. And he signed as one of the witnesses.

A. Yes sir.

Q. Now, when you come to think it over, isn't it a fact that after Mr. Courtney came down and stuck up his attachment notices, is when the bill of sale Plaintiff's Exhibit 2 was written out by someone else besides Ward, and that you got Courtney to sign as a witness?

A. Now, wait a minute. I thought it was the same time, but I remember now that that was written out at Christopher's house.

Q. That was after the attachment was levied, wasn't it? A. I think it was. I guess so.

Q. This original instrument, Plaintiffs' Exhibit 1, that was signed by Mr. Ward—that was signed up before the attachment was levied? A. Yes sir.

Q. Then, after Mr. Courtney had stuck up the attachment, then you went up to Mr. Christopher's house in Chatanika, and then this bill of sale (Exhibit 2 of Plaintiffs) was made out. A. Yes sir.

Q. And that is the time John Erickson and R. M. Courtney signed that as witnesses. A. Yes sir.

Q. So, when you testified a while ago that they were both made at the same time, you were mistaken.

A. Yes, I was mistaken then.

Q. After the attachment was levied, after Mr. Courtney went and put up his notices, then you boys went down, didn't you, and started to eat some of the provisions, or something of that kind.

A. Yes sir.

Q. Then Courtney came and told you to get out, that that was under attachment. A. Yes.

Q. Then Courtney sold that sometime afterwards, sold the provisions. A. Yes sir.

Q. So, the only property for which there was any written agreement, or bill of sale we will call it, before the attachment was levied, was just this that Mr. Ward had in his bill of sale that is marked Plaintiffs' Exhibit 1. A. Yes.

Q. That is the only property that had been transferred to you and Mr. King as trustees.

A. Yes sir. "I should judge that there was about 100 cords of wood, more or less, on the ground, I didnt measure it. The Russian Mining Company was burning the wood from that pile from the 29th day of April 1912, when the bill of sale was given to Mr. Ward, until the 11th of June, when they shut down. They were using quite a few men, were burning the wood carrying on mining operations; used the largest pieces for timbers in the mine; were running pretty steady; burned between 2½ and 3 cords of wood per day, which included the timbers used in the mine; the mine was run about 40 days after the bill of sale

was given Ward.

“Q. Do you know just how much wood was there at the time that this original so-called bill of sale was made to H. C. Ward?

A. That is what I gave—nearly one hundred cords, more or less.

Q. When it was first given to Ward on the 29th of April? A. I wasn't there then.

Q. You don't know much there was then. A. No.

Q. You didn't measure the wood in June after they shut down mining, did you? A. No.

Q. After Courtney told you to get out of the bunk house, or out of the messhouse, you boys left the claim, didn't you? A. Yes sir.

Q. You hadn't put up any notices before that, had you? A. No sir.

Q. And you didn't put up any after that?

A. No sir.

Q. So, after Courtney told you that you couldn't eat up the grub, you boys went away and you got work elsewhere. A. Yes sir.

Q. And none of you went back again, did you, until after the marshal sold the property? A. No sir.

Q. You came to see Mr. Clegg, and had Mr. Clegg serve notice on the marshal claiming some of this property, didn't you? A. Yes sir.

Q. That was all that you did in regard to the property. A. Yes sir.

Q. After Mr. Ward gave you this paper in the cabin, what did you boys do just after that?

A. We just went down on the claim.



Q. You just went down and commenced to look around a little bit.      A. Yes sir.

Q. And you went up town, didn't you?

A. I went up town afterwards, in the afternoon sometime.

Q. And you saw Courtnay up town about 12 o'clock, didn't you?

A. I couldn't say exactly, but I think it was about that time.

Q. Right after Ward had signed this paper, you went over onto the claim.      A. Yes sir.

Q. And a little bit after that Mr. Courtnay came down and put up some notices.      A. Yes sir.

Q. Then is when you went up town and signed this blue paper Plaintiffs Exhibit 2; that was the time it was signed up.

A. Yes sir. "I have bought a new hoist, the same kind as the one on the ground, would say that it is worth \$250. It was not in bad shape, was in good running order, a man did not get stuck in the shaft a short time before because of any defect in the hoist. It do not know that it cost over \$100. to repair the hoist after it was sold by the marshal. I think it would have sold there on the ground for \$200. or \$250. I am not a mechanic, but I could tell. I did not examine it, because I wasn't running it, but I know it was in fair shape. I have not bought or sold any carriers, would say that the carrier was worth \$50.00. I am not making a guess at it; as I know that they cost new from \$75 to \$125; I know that a second-hand carrier is not worth as much as a

new carrier, that is why I say that that carrier is worth \$50. The bucket was pretty well worn out; I have not bought any buckets, have not sold any machinery out at Chatanika; about the time mentioned I think the wood was worth in the open market \$10. per cord. Yes, I am just thinking that. In the summer time the wood costs all the way from \$1.50 to \$3. to move wood. It costs more in the summer than in the winter. A good deal of the wood had fallen down and was lying in the wet. It was all 16-ft. poles. It was good wood, some small wood and some good wood. Some was good and some wasn't.

"Q. Don't you know that there was not to exceed seventy five cords of wood left in that pile?

A. It may be so.

Q. You were guessing a while ago when you said there were 100 cords?

A. Just taking a rough guess at it."

UPON REDIRECT EXAMINATION BY MR.

CLEGG:

I don't know where Tom King is; I heard he was over on the Coast, have not seen him since the suit was started a year ago last July. I remember King was here at that time, I got him to put up some money to pay the costs of the action.

"Q. Now, about this paper that has been introduced in evidence and marked as Plaintiffs' Exhibit 2, which you said was made at Christopher's—

A. Yes.

Q. I want to understand what your statement is

with reference to the time that was made out. Keeping in mind the time that Courtney came down onto the property and attached the property— A. Yes.

Q. Was it before or after that?

A. Before that lease?

Q. This paper that was made out at Christopher's.

A. I don't remember, but it was made after the property was turned over to us.

Q. What?

A. It was made after the property was turned over to us, that is, after the bill of sale.

Q. After the Ward bill of sale was turned over to you—(Int—? A. Yes.

Q. —this was turned over to you. A. Yes sir.

MR. CLEGG: Q. What is your statement as to the time that second paper was made out?

A. I couldn't say the time, because I don't remember. But that paper was made out in Christopher's house sometime in the afternoon, but I couldn't say the hour because I don't remember. I thought at the time that paper was made out that it was wrote by Joe Ward, but it was not. It was wrote by another man.

Q. Who was it wrote it?

A. It was the bartender there. I don't know who it was.

Q. Was that after Courtney had been down on the property? A. Yes.

MR. CLEGG: That is all.

MR. CLARK: That is all."



SAMUEL FOWLER, witness for plaintiffs, after being duly sworn, testified in substance as follows, upon direct examination by MR. CLEGG:

My name is Sam Fowler; I am a stationary and steamboat engineer; was employed by the Russian Mining Company during the spring of 1912, as an engineer; I worked from November or December until the 29th day of May, 1912; I mined sometime, probably a month; I am familiar with the property in question on the 11th day of June, that was being used by the Russian Mining Company; have had experience with mining machinery, such as hoists, carriers, buckets etc.; was running the hoist there on the property when I was working there; I would consider the hoist worth about \$200 easy enough. the carrier worth about \$50., the bucket, I couldn't say how much—I do not remember what condition it was in. I know the wood that was on the ground, can't tell the exact amount there on the 11th of June, would consider it worth about \$9. a cord, at least I think that is a fair price. I know there was a trolley cable there and consider it of the value of \$50. anyway.

UPON CROSS EXAMINATION BY MR. CLARK:

The Russian Mining Company got a larger bucket from Joe Ward; I do not remember that it was in bad shape, only that they wanted a larger bucket and they changed the bucket; the carrier and cable was second hand; do not know whether any part of the hoist was broken on the 11th of June or not; if it cost \$100. to repair the hoist after the 11th of June,

I wouldn't be able to say whether it was then in the same condition as when I knew it. I don't know its condition on the 11th of June, was not there and didn't see it; the last I saw of it was on the 29th of May. I was there after the 29th of May, but didn't pay any particular attention to it, just saw it running all right. In estimating the value of the wood, it was what I would pay for it to put it on the ground where it was at that time. If people at a distance wanted the wood, they would have to pay \$9. a cord for the wood and move it from there. They would have to pay for moving it, I don't know whether they could get it placed on their ground for \$9. I say it was worth \$9. per cord on the ground for mining, I don't know what it was worth on the open market. I can't say that I do, except wood that came in there on the train.

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CARL POST a witness for plaintiffs, after being duly sworn, testified in substance as follows, UPON DIRECT EXAMINATION BY MR. CLEGG:

My name is Carl Post; I am a miner; I know Mr. Serafino and Mr. King; I worked for the Russian Mining Company last spring before the 11th day of June; I remember the time I quit there, which was on the 8th or 9th of June; I didn't get any money; I went with some of the men to get my money; I went with the boys who had been working there and the Russian Mining Company said we would have to wait until a cleanup; after the cleanup they went broke and I never got my money. I remember

Joe Ward; I went to his place one morning with the rest of the men; I never got the money; Ward signed a bill of sale; all the boys that were working there were there at that time; I remember a few by name, there were ten or eleven of them, I can't tell exactly. All the members of the Russian Mining Company were there when Ward signed the paper, the bill of sale.

“Q. What was said there at that time about Serafino?”

A. Well, he is the one the pay comes to. He is entitled to that bill of sale, and he wanted to turn that bill of sale to Mr. Serafino. He wanted them to pay the labor.

Q. Turn it over to Serafino? A. Yes sir.

Q. For him to pay— A. Yes sir.

Q. —out of the property? A. Yes.

Q. Was that satisfactory to you? A. Yes.

Q. How did the other boys feel about it?

A. All the boys were satisfied with that.

Q. Did the Russian Mining Company— A. Yes.

Q. Agree to that? A. Yes sir.

Q. Can you read Russian?

A. Not quite enough.

Q. Did you ever see this paper before (Hands a paper to witness) Take it and look at it, and see if you ever saw it before. Do you know anything about that?

A. I was see them make it.

Q. Where did you see it?

A. In the same place that we been working.



Q. They made it there at that place? A. Yes.

Q. When was it, the same day that you were up at Ward's. A. Yes sir, the same day.

Q. Can you read that? A. No.

Q. You cannot read that.

A. No, I cannot read that. "Yes, I know how much was due me. When I quit there was about \$257.50.

UPON CROSS-EXAMINATION BY MR. CLARK:

"Q. Did you find your name in that list?

A. I never looked. I think I find it.

Q. I will let you look and see (Hands paper to witness) Can you find your name in that list?

A. That (showing) is supposed to be me.

Q. The first name is— A. Carl.

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BAPTISTE SERAFINO, a witness for plaintiffs, recalled, testified UPON DIRECT EXAMINATION BY MR. CLEGG, in substance as follows:

I have a list written in English of the names of the men who claim wages due at the time they quit, and of the amounts—of the people that authorized me to act for them under the trust. They have set opposite their names, in the majority of cases, the amounts due. Most of them were there at Ward's place, in the room at the time Ward signed the bill of sale. The list was not made out after Mr. Clegg had gone on the ground, it was not made a long time after the suit was begun. I think the list was made out the same day and each man had his own name on there and that list was made out to me by the Russian

Mining Company. I am positive it was made out that same day. I am certain that it was not made after the suit was commenced. I do not know how it happens that there are names on there that were not on the list made by the Russian Mining Company. The list was signed by all the men, maybe some of them wasn't around there and wasn't put on that, but the list was made by the timekeeper and he figured out the amount and everything which each man had coming.

"MR. CLARK: We still object, because they first set forth this list in Russian as the list of the people he held for. Now they come in with another list containing entirely different names, and claim that he held for them.

A. They are supposed to be the same names.

MR. CLARK: But they are not.

THE COURT: I understood he was offering it to show an act of ratification.

MR. CLARK: He is asking the amounts due.

MR. CLEGG: It is to get in the record the men for whom this man was acting as trustee, and the amount due them.

MR. CLARK: It cannot be proved that way.

THE COURT: You can ask him the question, but, as to the amount due them, it is not competent evidence.

MR. McGOWAN: This list (Indicating) is signed by the Russian Mining Company, the people that made the trust. The laborers could not make the trust.

MR. CLEGG: They consented to it.

MR. McGOWAN: Only the ones on this list signed by the Russian Mining Company. And we object to this list (Indicating) as irrelevant, incompetent and immaterial.

THE COURT: So far as they differ, we will consider that later."

I know Bozs Wucettih also Nick Cvietovich; Mike Zizich, Enan Zalipa, Alick Honlob, Alexander Honlob. I was there when they signed this paper.

"MR. CLEGG: We will introduce this paper without the amounts due them. We don't care anything about the amounts.

MR. CLARK: We object as we contend that there are names on there that do not belong there.

THE COURT: The paper may be admitted for the purpose stated.

(Marked Plaintiffs' Exhibit 3)

(Plaintiffs' Exhibit 3 is a list of names as follows:)

"Bozs Wucettih.

Nick Cvietovich

Mike Zizich.

Enan Honlob

Alexsandr Honob

Gob Ston

Alick——

Tom King

Sam Falar

Nick Aldatoff

Shorn

Gob Jankowski



Call Post

Baptist Serafino

Juan Mien Seki.'

MR. CLARK: We note an exception. (Exception allowed)

MR. CLEGG: With the exception of this Juan Mien Seki, has any one of those men ever got any portion of the amount they claim from the Russian Mining Company?

MR. CLARK: That is not redirect examination.

THE COURT: Q. Do you know whether they have or not?

A. Well, I know there is one that had, but I don't know anybody else besides him.

MR. CLEGG: That is all.

UPON RECROSS-EXAMINATION BY MR.  
CLARK:

I do not know where all these men are. Nick Aldatoff quit working on the 10th of June. He was there on the 11th and 12th, his name was on the list which was furnished.

"A. Yes, that is his name right there. (Indicating)

MR. CLARK: Q. That is Chaltoff. I mean Nick Aldatoff.

A. Oh, that is another. Yes, I know him.

Q. He wasn't working there at that time?

A. No, he was not. That is the fellow that hauled the wood.

Q. He was not one of the laborers at all?

A. No sir.

Q. He was not there on the day that you boys were

appointed trustees, was he?

A. No. He wasn't there.

Q. He merely signed his name to this long after?

A. No, not long after; the same day as those fellows.

Q. He was not one of the laborers at all. A. No.

Q. You didn't consider when you were appointed trustees that you were trustees for any except the laborers that were working there. A. Yes sir.

Q. You didn't consider you were trustees for Aldatoff? A. No.

Q. He didn't sign it until the next day, did he—Aldatoff?

A. No. I think he signed it the same day, the 11th.

Q. He signed it late in the afternoon, didn't he?

A. Yes sir.

Q. These other men whose names are signed afterwards, they signed later in the day, didn't they?

A. You know how it is. When I meet you a half an hour afterwards, I met another one and have them sign it, and so on."

Plaintiffs then introduced in evidence their Exhibit No. 4, as follows:

"Fairbanks, Alaska, June 29, 1912.

To the United States marshal for the Territory of Alaska Fourth Division, H. K. Love, Esq. and any deputy:—

You and each of you are hereby notified that the undersigned Baprist Serafino and Tom P. King, as trustees are the owners and entitled to the possession of all that certain personal property consisting

of 150 cords of sixteen and four foot wood, hoist, carrier, cables, pipes, points, flumes, sluice boxes, and all mining machinery and implements and tools whatsoever, hardware, groceries, provisions and buildings, now in your possession as said U. S. Marshal, and heretofore in the possession of one R. M. Courtney, a Special officer appointed by Hon. S. R. Weiss, Commissioner and ex-officio Justice of the Peace of Chatanika, Fairbanks Recording Precinct 4th Division, Alaska, and seized and taken and levied upon by said Courtney as aforesaid in those certain actions in the Commissioner's Court of the aforesaid Commissioner at Chatanika, said actions being entitled respectively A. Christopher, plaintiff, against Russian Mining Company, defendant, and John Barrack, plaintiff, against Russian Mining Company, and———against Russian Mining Company, defendant, each of said actions having been commenced on the 11th day of June, 1912, and writs of attachment having been issued in each of said causes in the afternoon of said day, and the above described property having been taken and seized and held by said Courtney unlawfully from the possession of the undersigned on the afternoon of said day;

And you are further hereby notified that the undersigned are the owners and were such owners on the 11th day of June 1912 of all of the above described property, prior to the issuance and service of said illegal and unlawful writs of attachment and prior to the illegal and unlawful levy and pretended levy thereunder, by virtue of the instruments in writing,



(true copies of which are hereto attached), and you are further notified that the undersigned are entitled to the immediate return and delivery of all of said above described property, and they do now and hereby demand of you the immediate return and delivery thereof within five days from the delivery to you of this notice, or in case of your failure to comply with this request the undersigned will at the expiration of said time be compelled to and will commence an action in the District Court of said Territory at Fairbanks for the re-delivery of all of said property to the undersigned, or in case delivery cannot be had then for the value thereof to the amount of Seventeen hundred dollars (\$1700.00) together with damages in the sum of Five hundred dollars (\$500.00) for the wrongful taking and detention thereof.

You are further notified that all of said property at the time of the pretended levys aforesaid by said Courtney as such Special Officer was conveyed to the undersigned, and delivery and transfer made thereunder to us, and the same was in our possession as trustee for the benefit of the laborers to whom said Russian Mining Company was then indebted, all of said property being in our possession as a pledge for security for the payment of the debts owed by said Company to the respective laborers, exceeding in amount the sum of \$1600.00

Yours respectfully

BAPTIST SERAFINO

TOM P. KING

Trustees

By CECIL H. CLEGG

their attorney

Received service of a copy this 29th day of June, 1912.

H. K. LOVE, U. S. Marshal.

By J. B. MATHEWS Deputy."

(The above marked Plaintiffs' Exhibit 4)

MR. CLEGG: I would like at this time to introduce in evidence the deposition of C. H. Ward, taken by stipulation in this case before E. T. Wolcott, notary public, on September 9th last.

MR. MCGOWAN: It was taken in behalf of defendant.

MR. CLEGG: I am introducing it as my evidence.

In the deposition of C. H. Ward, a witness for defendant, taken before E. T. Wolcott, a notary public, Fairbanks, Alaska, September 9, 1913, upon oral interrogatories, in the presence of Cecil H. Clegg, attorney for plaintiffs, and John A. Clark, attorney for defendants, said witness testified, in substance as follows, UPON DIRECT EXAMINATION BY MR. CLARK:

My name is C. H. Ward; I have been mining in the Fairbanks District since 1903; I know Tom P. King and Baptiste Serafino; I have an interest in Discovery and one below Chatanika Flats, where Serafino, King and others were working in 1912, where they were working for Russian Mining Company for wages; the Russian Mining Company had a lease on my property and Serafino and King were employes of the Russian Mining Company; the

Russian Mining Company were unable to pay their bills and had trouble with their men.

“Q. Did you have any wood or machinery that they were using?      A. I had machinery.

Q. Did they buy any wood from you, or agree to buy any wood from you?      A. No sir.

Q. I mean; did the Russian Mining Company have an option from you to purchase any wood from you?

A. No.

Q. I show you this instrument (Handing paper to witness) and ask you if that is your handwriting.

A. It is.

Q. Was that in connection with any deal that they had there, or any mining operations they were carrying on?

A. Yes. They had given me a bill of sale of the wood.

Q. Was that to secure money that was owing from them to you?      A. Yes.

Q. Did you take possession of the wood that they gave you the bill of sale of?

A. I left it lying on the claim where it was.

Q. Did you put up any notices of any kind claiming the wood.      A. No.

Q. Was this paper I have shown you, an option back to them that you gave them to purchase the wood?      A. Yes.

Q. Did they ever pay you for that wood?

A. They did not. No.

MR. CLARK: We ask to introduce this paper in evidence.



MR. CLEGG: No objection.

(Marked as Defendants' Exhibit A)

MR. CLARK: Q Concerning the machinery that they were using, was that your machinery?

A. Part of it. Yes.

Q. Did you ever sell it to them? A. I did.

Q. Did they ever pay you for it? A. They did not.

Q. Did they ever sell it back to you, or give it back to you?

A. I took possession of it after they closed down.

Q. On June 11th, 1912, did you turn over any mining machinery or wood to Sarafeno and King as trustees for anybody? A. I did.

Q. Just state the circumstances under which that came about? State what you know in connection with that matter.

A. Well, they wanted to get an attachment on it. I had a bill of sale of the wood and machinery for the machinery they had bought from me, and a note I held, and they wanted to get an attachment, and they wouldn't make the attachment out for them. At 9 o'clock in the morning they wanted the attachment, and they wouldn't make an attachment out for them. So they came to me about it. And in the meantime, afterwards, it was attached the same day by different parties. It was attached at 12 o'clock by different ones—Ringseth, and I don't know who else. And after they wouldn't give them an attachment on it, as I held that option and a note against it I turned it over to the men for their wages.

Q. What did you do to turn it over to the men?

A. I gave them an agreement. I guess they have got it yet.

Q. Was that after the Ringseth attachment had been levied upon the property?

A. That was before. It was given at 11 o'clock.

Q. At what time was the attachment levied?

A. About 12 o'clock, somewhere about 12 o'clock.

Q. Where was the machinery and wood at the time you say you gave it over to them.

A. On One Below, Chatanika Flats.

Q. In whose possession was it?

A. It was in the Russian Mining Company's possession yet.

Q. What did you do towards turning it over to them?      A. To the men?

Q. Yes.

A. I turned over the note I had, and the agreement I had with the Russian Mining Company—the option, and also gave them—I believe I gave them the lay papers, but I wouldn't be sure.

Q. Where were you when you did this?

A. I was in my cabin on the Chatanika.

Q. And they were there with you at that time?

A. They were there with me.

Q. How long after this was done was the attachment levied?

A. About an hour I suppose, or an hour and a half.

Q. What did the men do between the time you say your turned it over to them and the time the attachment was levied.      A. They did nothing.

Q. They just stood around there and did nothing.

A. They were around there and did nothing.

Q. They didn't stick up any notices of any kind on the wood or on the machinery, or anything of that kind?

A. I believe they put up notices on the wood.

Q. Do you know when those notices were put up?

A. Directly afterward. I wouldn't be certain of it, because I was working at the time, but I think they did.

Q. Did you see them put them up?

A. No sir. But they told me they were going to put them up.

Q. You don't know of your own knowledge whether they did or not?

A. No. I don't know whether they did or not.

Q. Did you at that time on June 11th, 1912, sign an instrument that reads as follows (reads) "Chatanika, Alaska June 11 1912. I the undersigned holding a bill of sale of mining property described in this bill of sale, do hereby release said property to the following laborers of the Russian Mining Company. They are to hold wood and machinery for wages due them. This release is given to Robert Serafino and Tom P. King who act as trustees for the others." Signed 'C. H. Ward.' 'Witness: James M. White.' Was that the instrument that you gave them?

A. Yes sir. That was the instrument that I gave them.

Q. They were to hold it as security to guarantee the payment of their wages.

A. Yes.



Q. Do you know whether or not Sarafeno or King ever got their money out of the Russian Mining Company after that?

A. Not that I know of. I never saw any of them afterward.

Q. When the Russian Mining Company shut down out there, they gave you a bill of sale covering wood, a hoist, and pipes and points and hose and fittings, bucket and carrier, bucket block, and cables, flume and sluice boxes, cooking range, dishes, etc., They gave you that bill of sale at that time.

A. That bill of sale was given to me before they closed down.

Q. That was in April.                      A. Yes.

Q. They went right on using that machinery and wood and everything.                      A. They did.

Q. You didn't stick up any notices, did you, on the property, claiming it.

A. I had White stick them up.

Q. Do you know whether they were put up on all of the machinery.                      A. I do not know.

Q. Do you know what the wording of the notices were?                      A. No. I don't know.

Q. Do you know whether the notices remained there?

A. They remained there for some time.

Q. Do you know whether that bill of sale was recorded.                      A. It was not. No.

Q. Did you ever file it for record yourself?

A. No sir.

Q. Or ask anyone else to do it?                      A. No sir.

Q. The certified copy attached to the complaint in this action says that it was filed for record at the request of Duke & Thompson on the 31st day of May, 1912, and recorded in volumes 2 Bills of Sale, page 95, Records of Fairbanks Precinct. That would be here in town. Do you know anything about that, about the recording of it?

A. I wasn't there at the time. I left my partner James White looking after things, and he might have filed it for record.

Q. Or asked Thompson to do it.

A. Or asked Thompson to do it.

Q. This bill of sale was given to you as security for your indebtedness.

A. It was.

Q. And if they paid your indebtedness, you were to turn it back to them.

A. I was to turn it back to them. "Between the 29th of April, 1912 and the time I made the bill of sale to King and Serafino, no part of the indebtedness was paid. They owed me approximately \$1,250.00, but they agreed to pay for the machinery and the note. I asked them to give me the bill of sale because I was afraid they would be attached by someone else and I did not want to attach them myself. I had it given to me to keep them from being attached, because if they were I wouldn't get anything.

"Q. You simply considered that you held that as security, and if they paid you the money you would turn it back.

A. Yes. If they paid me the money, I certainly

would turn it back.

Q. When Serafino and King were trying to get out an attachment you simply released whatever claim you had on it to Serafino and King as trustees for the others.

A. Yes. My claim against the machinery was \$250.00 after I took my own machinery, and they paid a note in the First National Bank for \$600.00.

Q. What was that note concerning?

A. I went on a note to the First National Bank for \$600.00.

Q. Was that included in the \$1,250.00?

A. No. It was not.

Q. All they still owed you on the machinery was \$250.00?

A. After I took my own machinery back. On what they agreed to pay for it.

Q. Do you mean the taking of this bill of sale?

A. I gave them an option on this machinery for \$1,000. and besides that I held a note against them for \$250.00.

Q. So you considered that Serafino and King, when you turned it over to them as trustees—you considered you were simply releasing the claim you had on it as security for your claim; you were releasing that to them.

A. I was.

Q. So as to protect them on their wages. A. Yes.

Q. And the only instrument that was executed by the Russian Mining Company to you was the bill on sale on the 29th of April, 1912.

A. That was all.



Q. And they continued to use the machinery just as they had before.      A. They did.

Q. They continued to burn up the wood that was on the ground.

A. Yes. "They owned one boiler that isn't described in the bill of sale, and the only property they turned back to me to be held as security is what was described in the bill of sale; they had a boiler there that they did not turn over—a small 18 or 20 H. P. boiler, I guess. I had nothing further to do with the transaction, as I turned over the bill of sale I had to King and Serafino.

"Q. And you considered that they were holding it in the same way you held it. In other words, you gave them the title that you had.

A. I did. "I was aware they were trying to get out an attachment in the forenoon, that is Serafino and King were. Weiss, the Commissioner refused to issue it to them. They didn't come to me at all. I went to them. My idea in turning it over to them was not to prevent Ringseth from getting his first lien upon it by attachment, but to protect myself with them too.

"Q. In what way would it protect you?

A. In what way would it protect me?

Q. Yes.

A. Protect me in the suit probably. Still, I had notices up.

Q. You mean, as far as the ground was concerned?

A. Yes sir.

Q. You had non-liability notices up, posted up?

A. Yes.

Q. You didn't want to get mixed up in any of these attachment suits.

A. I did not.

Q. That is all you know about the transaction.

A. That is all I know about it.

Q. You didn't have a bill of sale of the 18 horsepower boiler?

A. No. All I had a bill of sale of is in that (Indicating Ex A)

Q. That is all you turned over to Serafeno and King.

A. Yes."

UPON CROSS EXAMINATION BY MR. CLEGG:

"Q. Mr Ward, I want to show you this instrument which Mr Clark has been examining you about and which he has mentioned as the bill of sale. This instrument is numbered 36413-95, recorded on the 31st day of May, 1912, at 15 minutes past 10 A. M. and recorded in volume 2 of Bills of Sale, page 95, in the records of the Fairbanks Recording Precinct, Territory of Alaska by John F. Dillon, recorder. I want you to examine that and state if that is the bill of sale that you had reference to when you were being examined. (Hands same to witness)

A. Yes. That is it.

Q. Now, Mr. Ward, at the time of the execution of this instrument on the 29th day of April, 1912, who was the owner of this property mentioned and described in this bill of sale?

A. I was.

Q. Prior to the execution of this bill of sale.

A. The Russian Mining Company.

Q. That is what I mean. Before this bill of sale

was executed, who was the owner of all this property mentioned in this bill of sale?

A. The Russian Mining Company I suppose.

Q. As far as you know.

A. As far as I know.

Q. To the best of your knowledge.

A. To the best of my knowledge.

Q. You never heard anybody else claim it.

A. No.

Q. They gave you this bill of sale of this property in lieu of a mortgage, to secure you for moneys that you had advanced or had agreed to advance in their operations.

A. Yes, moneys and machinery I had furnished them.

Q. Now, at the time you executed this instrument that I hold which reads, (reads) 'Chatanika, Alaska, June 11, 1912, I, the undersigned, holding a bill of sale of mining property described in this bill of sale, do hereby release said property to following laborers of the Russian Mining Company. They are to hold wood and machinery for wages due them. This release is given to Robert Sarafeno and Tom P. King who act as trustees for the others. C. H. Ward Witness: James M. White' I say, at the time you executed that instrument on there, the situation had not changed any since the 22nd day of April.

A. It had not. No.

Q. And your transfer of your interest in the property and your rights to the property mentioned in this bill of sale was with the consent and at the re-



quest of the Russian Mining Company?

A. It was. Yes.

Q. They were all—Some of the chief men of the Russian Mining Company were present at the time?

A. There was six of them there.

Q. Six of them conferred with the laborers.

A. Yes. "The names of the six members of the copartnership are Nick Chakoff, Walter Rosin, Kosma Milkoniff, Mat Larkin, one was Kucyzinski, the engineer, and I do not know who the other was. The transfer of the property to Serafino and King was made for the purpose of securing the payment of the various amounts due the various laborers to King and Serafino, as their trustees, at their consent and request. I don't know how much was due from the Russian Mining Company to the laborers who constituted Serafino and King their trustees. I believe it was somewhere in the neighborhood of \$1600.00. Nearly all the laborers were present when King and Serafino were constituted trustees and agreed to act as such. They were present at my cabin.

"Q. There was no objection by any of them at that time as to this method of securing the payment of their wages? A. No.

Q. So that the transaction in all respects by the execution of this instrument by you here—this indorsement on the back,—was bona fide and in good faith. A. Yes.

Q. And meant for exactly the purpose for which it was intended, for which it is stated there.

A. Yes sir.

Q. That is correct, is it? A. Yes sir. It is.

Q. That was done with the consent, acquiescence and approbation of the Russian Mining Company who were there represented in person, or a great many of them. A. Yes.

Q. There was no other intention manifested by you, with the approval or consent of either of these parties, or the Russian Mining Company, in transferring this property to these laborers or to the trustees. A. No. It was for their wages alone.

Q. As security for their wages. A. Yes sir.

Q. Don't you recollect that this indorsement here on this bill of sale which has been shown to you, was made about 9 o'clock in the morning instead of 11, as you have testified?

A. No. It was not quite that early.

Q. It was somewhere between 9 and 11 you think?

A. Yes sir, between 9 and 11, because we were not up until 8 o'clock.

Q. And this bill of sale was executed by you and this property turned over to these trustees for the reason that they went to Commissioner Weiss out there for the purpose of getting an attachment and he refused to issue one. A. Yes sir.

Q. They intended to attach this identical property. A. They did. Yes.

Q. And was to prevent any costs accruing to the laborers or any expense to them, that you voluntarily turned it over to them and put them in your

shoes. A. It was.

Q. So far as you are concerned, you have relinquished all claims or rights of any nature you have to any of this property mentioned in this bill of sale.

A. I relinquished everything when I turned that over to them.

Q. That was bona fide your intention, that the laborers could use that property by selling it or transferring it to anybody else and apply the money on their wage account. A. Yes.

Q. You didn't require them to go through any formality or account to you for the proceeds.

A. No.

Q. As far as the transaction was concerned and the relinquishing of your rights, it was the same as if you had turned it over to them voluntarily and told them to handle it themselves and pay themselves. A. Yes.

Q. That was the understanding with the Russian Mining Company and these trustees.

A. It was. They were there at the time.

Q. Even if they had got more money out of this property than was due to them, you didn't feel that they were under any obligation to make an accounting to you for it?

A. No sir. "There were something like 150 cords of wood on the ground at the time of the execution of this relinquishment to the trustees. There was 16 and 4-ft. wood. I should judge the 4-ft. wood was worth \$10.50 per cord and the 16-ft. wood, \$8.00



or \$8.50 or \$9.00.

“Q. After the transfer of all of this property mentioned in the bill of sale to the trustees, Mr. Ward, you know that they went down there on the property and took possession of it prior to the time that any attachment was taken out?

A. Yes. They were down there.

Q. You were down there at the same time?

A. No. I was in the cabin.

Q. Were you not down there working?

A. I was working right close to the mess house.

Q. Right close to the mess house on this property where the range and cooking utensils mentioned in this bill of sale were located?

A. That boarding house wasn't on the same claim I was working on.

Q. You know for a fact, however, that they went down there and were in possession of all of this property prior to the time of the levy of these attachments?

A. Yes. There were some of them at the mess house and some of them at the boiler house.

Q. Don't you know when Courtney went down there assuming to act as a special officer that he drove the men from the mess house and took the grub away from them?

A. I don't know anything about that. “The 10 H. P. American hoist was pretty badly used. It was not worth much. The approximate value of the pipes, points, fittings, bucket, carrier, bucket block and cables was not more than \$250.00 or \$300.00 They

were old pipes, old buckets and old cables.

“Q. You were very much disappointed that the purpose of your transfer of this property to the trustees for the benefit of the laborers was not carried out.

MR. CLARK: We object as immaterial.

A. Sure I was, because I wanted to see them get their money.

Q. And you wanted to see the plan agreed upon accomplished.

A. The laborers of the Russian Mining Company agreed to that before they came to see me.

Q. They agreed to this procedure before they came to you and requested you to carry it out.

A. I went to the Russian Mining Company and wanted to turn it back to them so they could turn it over to the men themselves.

Q. They said it would be simpler for you to do it.

A. Yes sir.

Q. So it was therefore done that way?

A. Yes sir. “There was no intention of defrauding anybody in this transfer, on my part nor on the part of the Russian Mining Company, as far as I know, nor on the part of the trustees.

NOTE: (The bill of sale marked Plaintiffs’ Exhibit 1 on the trial was here introduced and marked Plaintiffs’ Exhibit 1 in the deposition, copy of said bill of sale being heretofore set out.)

UPON CROSS EXAMINATION BY MR CLARK:

“Q. The Russian Mining Company and the laborers had agreed that it should be turned over to

Sarafeno and King as trustees before they came to you.

A. They agreed to appoint Sarafeno and King as trustees up in my cabin and save all of them signing that paper.

Q. Didn't I understand you to say a while ago that they had agreed before they came to you in regard to whom the trustees should be?

A. They agreed among themselves. I went to them and wanted to turn the bill of sale over to the Russian Mining Company. I told them I didn't expect anything out of it; that they could turn it over to the laborers.

Q. Did you turn back your own boiler to them?

A. I did not. No.

Q. You considered that the property you held was still theirs. and merely held it for your security, and when they paid you you would turn it back to them.

A. I would turn it back when I got my money.

Q. At the time that bill of sale was first given to you, Vachon was threatening an attachment?

A. Not that I knew of.

Q. You didn't know about that. A. No.

Q. Did they come to you voluntarily and offer to turn it over to you and give you a bill of sale of it?

A. I went to them. They pulled the oiler down at that time. I know it was after the stack was off.

Q. In regard to them taking possession, all you know is that they said they put up notices. A. Yes.

Q. You didn't see them yourself.



A. No. I didn't go down there.

Q. You don't know what they did between the time you turned this over and when Courtney came down there and attached.

A. No. We were working within a hundred feet of the mess house, and some of them were in the boiler house.

Q. You didn't see any notices up?

A. I didn't see them.

Q. Would you have seen them if there had been any posted up around there?

A. They couldn't post any on the mess house, because that belonged to us; but on the boiler house and the wood on the property, I wouldn't have seen it, no.

Q. You don't know anything about that, whether they had any notices posted or not.

A. No. "I don't know whether any of the men for whom King and Serafino held as trustees have since sued the Russian Mining Company; I did not get all my money for my machinery; I had not measured the wood and do not know how much was there at the time the attachment was levied. All I know is what they told me.

UPON RECROSS EXAMINATION BY MR.  
CLEGG:

I saw the wood afterwards, it was scattered all over. I judge there would be over 100 cords, but I didn't measure it, as it was scattered over quite a space. After the property was turned over to the men by me, the Russian Mining Company didn't go

back to the property any more, but picked up and left and the men went into possession immediately.

UPON FURTHER REDIRECT EXAMINATION

BY MR. CLARK:

Q. The Russian Mining Company were still around there during that day?

A. Some of them were, and some of them were not.

Q. The reason why the provisions were taken out of the house was because the men were eating it up. Isn't that a fact?

A. I don't know anything about that.

Q. You don't know anything about what happened afterward.

A. They were there I know when Courtney came down, and he nailed up the place. He put an attachment on the house, and I went to him afterwards and asked him what he was attaching that for, and he went and saw Metzger, and Metzger told him to take his attachment off the house. And in the afternoon they took the provisions away. I saw that. I was working right there.

MR. CLARK: That is all.

MR. CLEGG: That is all.

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MR. CLEGG: These documents that are attached to the deposition are the same documents that have been already introduced. That is our case.

PLAINTIFFS REST

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MR. CLARK: I desire to make a motion, and I do not know whether the court wants it made in

the presence of the jury.

THE COURT: Has the defense any objection?

MR. CLEGG: No objection.

MR. CLARK: At this time we ask the court for a nonsuit, or directed verdict of the jury, directing them to bring in a verdict in favor of the defendants for the reason that the plaintiffs have absolutely failed to prove the allegations of their complaint or to prove the facts that were absolutely necessary to be proven in order to entitle them to the relief demanded in the complaint, particularly as follows: That it was incumbent upon the plaintiffs in this case to show that they had title to the wood and this other property described in the bill of sale at the time the attachment was levied by the United States Marshal. The evidence, as it has been presented up to the present time, shows that about 12 o'clock on the 11th day of June, 1912, the United States Marshal, acting through his special deputy, came down and attached all of the property situated on the ground, including the property that is included in the Ward so-called bill of sale, and a lot of other property. The testimony further shows that they owed Ward \$1250.00; \$1000 on the option on the machinery, and \$250. in addition to that; that Ward, for some reason—he doesn't state exactly why—demanded that they give him security, as there were to be some attachments levied or something of that kind. That they then gave Ward a bill of sale, so-called of this machinery and the wood for \$1250. Ward's testimony further shows that when he took



his machinery back, that there was only \$250. due him; and admits in his direct and in cross examination that that was merely taken as a mortgage to secure his claim, and that he would turn the property back immediately upon them paying him the amount of money due him and that he merely held it as security. He admits it was a mortgage. He was not in possession, and never was in possession; the Russian Mining Company remained in possession at all times. Therefore, as a bill of sale, it was absolutely void instrument; as a chattel mortgage, it was void as against attaching creditors, because he was not in possession, and it had no affidavit of bona fides, and was not executed according to the provisions of the Codes of Alaska relative to the execution of chattel mortgages. Therefore, when it comes down to the morning of June 11, 1912, all in the world that Ward could possibly have was a chattel mortgage for \$250., but a chattel mortgage that was absolutely void; and, as he testifies, he turned over what interest he had and no more; he merely assigned his interest in that to these laborers., and they never took possession or put up any notices. When the marshal came there, he found the Russian Mining Company still there in possession; therefore, when the attachments were levied, we were entitled to the possession. We, therefore, contend that they have absolutely failed to prove the most essential element of their complaint, to-wit: that they had a title to that property, and had the right to the possession of it. They have failed to prove that, and we therefore

ask the court to grant a nonsuit or a directed verdict, whichever is proper under the practice; I think probably it is a directed verdict, and I ask the court at this time to do that.

THE COURT: Do I understand that you rest your case now?

MR. CLARK: No. We move for a nonsuit on the ground of the failure of the plaintiffs to make out their case.

THE COURT: Do you want to be heard in the matter.

MR. CLARK: Yes. (Argument)

THE COURT: The motion is denied.

MR. CLARK: Note an exception.

THE COURT: Exception allowed.

MR. CLARK: We desire to reserve the right to renew our motion to strike out certain portions of the testimony, before the case is submitted to the jury.

THE COURT: Yes.

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SAMUEL R. WEISS, a witness for defendants, upon being first duly sworn, testified in substance as follows, UPON DIRECT EXAMINATION BY MR. MCGOWAN:

My name is Samuel R. Weiss; I am the duly appointed Commissioner residing at Chatanika, Fairbanks Precinct, Alaska, and have been for three years and two months, and was such Commissioner during the year 1912. (Hands paper to witness and asks if that is his signature and seal). That is my

signature and seal; I know what those papers are.

(Defendants then offered in evidence certified copy of what purported to be a full and complete record of the suit commenced in Commissioner's Court, 4th Division, Territory of Alaska, entitled J. E. Barrack, plaintiff, vs. Russian Mining Company, defendant, being No. 43, commencing with the complaint, setting up the bond, undertaking on attachment, the summons, the execution, and the sale and the various returns.

OBJECTION by plaintiffs and the said instruments were admitted over the objections of plaintiffs and marked Defendants' Exhibit A, and are in the words and figures as follows; to-wit:

"In the Commissioner's Court for the Fourth Division, Territory of Alaska.

J. E. Barrack vs. Russian Mining Co.

#### MARSHAL'S RETURN ON EXECUTION.

I HEREBY CERTIFY AND RETURN, that I received the annexed writ of Attachment on the 24th day of June 1912, and that on the 26th day of June 1912 I duly executed the same by offering for sale at public auction the personal property heretofore attached in said cause, said offer made by posting a notice of the time and place of sale, in three public places within five miles of the place where said sale was to take place, to wit:—

One on the boiler house of the above named Defendants on Discovery Claim Chatanika Flats; one on the Post Office at Cleary; and one at the Town of Chatanika, all of said places being in the Fairbanks



Precinct, Territory of Alaska. And that on the 9th. day of July 1912, at 10 o'clock A. M. at the boiler house on Discovery Claim Chatanika Flats, being the time and place appointed for said sale, I did at the request of the plaintiff, J. E. Barrack, by public proclamation, then and there made, postpone said sale until July 16th 1912, at 10 o'clock A. M. of said day; and on the 16th day of July 1912, at 10 o'clock of said day, at the same place I did at the request of the plaintiff, J. E. Barrack, again postpone in like manner the said sale until July 23rd 1912, at 10 o'clock A. M. at the same place; that on the 23rd day of July 1912, at 10 o'clock A. M. I did offer for sale and did sell, to the highest and best bidders, for cash, all of the right, title and interest of the above named Defendants, Russian Mining Co. in and to certain personal property, more fully described as follows, to-wit:—

To J. E. Barrack for Five Hundred Fifty Five Dollars \$(555.00) about 75 cords, more or less, of wood— I Hoist, double cylinder— I Boiler, 18 HP I carrier— I bucket— I trolley cable— 6 shovels— 4 picks— 8 point hoses— 12 ft. pick steel— 10 ft. 5-8 iron— 18 ft. 1 in. pipe— 4 gal. benzine oil— 5 gal. red oil— I hack saw— I jack plane— I small hand drill— and to Paul Ringseth for One Hundred Twelve Dollars (\$112.00) 36 dinner plates 8 meat plates— 30 knives and forks— 30 table spoons— 30 tea spoons— 12 soup bowls— 30 tea cups— 30 saucers— 2 large meat trays— 2 mixing pans— 2 dish pans— I tea pot— I coffee pot— 2 large meat pots— I flour seive— I

syrup cup— 1 bread knife— 145 lbs. beef— 1 lbs. coffee— 5 lbs. baking powder— 1 lb. tea— 6 1 gal cans apples— 18 cans tomatoes— 14 cans beets— 25 lb. box dried apples— 3-4 box Ivory soap, small size— 3 sacks rolled oats, 9-s-18 cans fig pudding— 150 lbs bayo beans— 40 lbs. small white beans— 16 pcs. Bacon— 5 lbs. split peas—  $\frac{1}{2}$  gal. molasses— 27 cans cream— about 15 lbs. sugar 26 pkgs. corn starch— 50 lbs. flour— 17 cans of tomatoes— 6 cans olive oil,  $\frac{1}{2}$  gals. 28 cakes Armours white soap 11 cans pumpkin— 5 lbs. salt— 3 cans beets— 7 cans tomatoe catsup— 1 gals.— part can of coffee about 15 lbs. 1 box caldles——

Dated at Fairbanks, Alaska, this 26th day of July, 1912.

H. K. LOVE, U. S. Marshal

By S. B. Waite, Deputy.

Marshal's Fees \$28.46      Mileage \$49.20

In the Justice's Court for the Territory of Alaska,  
Fourth Division, Fairbanks Precinct.

J. E. Barrack Plaintiff vs. Russian Mining Co. Defendant. Execution.

The President of the United States of America,  
to the Marshal of Said Division and Territory, or any  
Deputy, Greeting:

Whereas, J. E. Barrack, of Fairbanks, Alaska, has recovered judgment against the Russian Mining Co. in the Justice's Court for the Fairbanks Precinct, said Division and Territory, on the 18th day of June 1912, for the sum of Four Hundred and seventy 22-100 Dollars, with interest thereon at the rate of eight per

cent per annum until paid, and costs of suit, amounting to twenty two and 70-100 dollars

Therefore, In the name of the United States of America, you are hereby commanded to levy upon, seize and take into execution the personal property of the said Russian Mining Co. At Chatanika, Alaska in your Division of said District sufficient,, subject to execution, to satisfy said Judgment, interest and increased interest, costs and increased costs, and make sale thereof according to law, and make return of this writ within thirty days from the date hereof.

Herein fail not, and have you then and there this writ.

Witness my hand and the seal of said Court hereto affixed this 21st day of June A. D. 1912

(SEAL)

SAMUEL R WEISS,

Commissioner and Ex Officio Justice of the Peace.

July 9, 1912. To the U. S. Marshal 4 Div. Please postpone sale of personal property in within case until 16th July 1912

McGOWAN & CLARK,

Attys for Plaintiff.

July 16th 1912 To the U. S. Marshal 4th Div. Please postpone sale of the personal property in within case to July 23, 1912.

McGOWAN & CLARK,

Attys for Plaintiff.

4th Div. Dist of Alaska Received Jun 27, 1912  
Office of U. S. Marshal Fairbanks, Alaska. Marshal's Docket No. 3875 Writ docketed June 27 1912  
Return docketed.....191...



(Indorsed): Filed Aug. 1st 1912. Samuel R. Weiss  
Commissioner

1 Hoist, double cylinder, 1 Boiler, 18 H. P. 1 Carrier 1 Bucket 1 Trolley Cable 100 cords (more or less) Wood, 6 Shovels, 4 Picks, 8 Point Hoses, 12 ft. Pick Steel, 10 ft. 5-8 Iron, 18 ft. 1 inch Pipe, 4 gal. Benzine Oil, 5 gal. Red Oil, 1 Hack Saw, 1 Jack Plane, 1 Small Hand Drill. 36 Dinner Plates, 8 meat Plates, 30 Knives and Forks, 30 Table and Tea spoons, 12 Soup Bowls, 30 Tea Cups, 30 Saucers, 2 Large Meat Trays, 2 Mixing Pans, 2 Dish Pans, 1 Tea Pot, 1 Coffee Pot, 2 Large Meat Pots, 1 Flour Sieve, 1 Syrup Cup, 1 Bread Knife.

No. ....Justice's Court. J. E. Barrack vs.  
Russian Mining Co.

Office of the Marshal,

Fourth Division, Territory of Alaska

Chatanika Alaska June 11, 1912.

To C. H. Ward: You will please take notice, that all moneys, goods, credits, effect, debts due or owing, and all other personal property in your possession, or under your control, belonging to the defendant named in the writ, of which the annexed is a copy, are attached by virtue of said writ; and you are hereby notified not to pay over, transfer, deliver, or in any way part with same to anyone but myself.

Please furnish a statement.

R. M. COURTNEY

Special Officer.

Chatanika Alaska June 11 1912 2:30 P. M.

I have nothing of any nature whatsoever belonging

to the above Russian Mining Co.

C. H. WARD.

Special Officer's Fees \$4.00.

In the Justice's Court for Fairbanks Precinct,  
Fourth Judicial Division Territory of Alaska.

Before SAMUEL R. WEISS, Commissioner and  
ex-officio Justice of the Peace.

J. E. Barrack Plaintiff, vs. Russian Mining Co.,  
Defendants. Special Officer's Return on Writ of At-  
tachment.

United States of America

Territory of Alaska

Fourth Division ss.

I HEREBY CERTIFY AND RETURN that I re-  
ceived the annexed writ of Attachment on the 11th  
day of June, 1912, at the hour of 15 minutes past  
one o'clock in the afternoon, and that I executed the  
same on the same 11th day of June, 1912, at the  
hour of 30 minutes past one o'clock in the afternoon;

By delivering a copy thereof duly certified by me  
to Nick Chaloff, one of the members of the firm of  
the Russian Mining Co., at Chatanika, Alaska, and  
by attaching all the right, title and interest of the  
above named defendants in and to one lot of wood,  
one boiler house and all the machinery contained  
therein and in the mine of the said defendants or  
on the surface of said mine, and one mess house to-  
gether with all provisions, ranges, cooking utensils  
contained therein, all being situated on Discovery  
Claim, Chatanika River, in the Fairbanks Mining  
and Recording District, Territory of Alaska.

Dated at Chatanika, Alaska, this 11th day of June, 1912.

R. M. COURTNEY

Special Officer.

Special Officer's Fees, \$4.00

In the Commissioner's Court for Fairbanks Precinct, Fourth Division, Territory of Alaska.

J. E. Barrack Plaintiff vs. Russian Mining Co.  
Defendant No. 43—Writ of Attachment.

The President of the United States of America,  
To the Marshal of the Territory of Alaska, Fourth Division, or to his Deputy, Greeting:

Whereas, J. E. Barrack hath complained that Russian Mining Co. is justly indebted to him to the amount of Five hundred seventy & 20-100 Dollars and ..... cents and the necessary affidavit and undertaking herein having been filed as required by law.

We Therefore Command You, That you attach and safely keep all the personal property of the said defendant not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, as above stated, to be found in your Division of said Territory, and as shall be of value sufficient to satisfy the said debt and the costs and disbursements of the said plaintiff herein. And of this writ make due service and return.

Given under my hand and official seal this 11 day of June 1912

(SEAL)

SAMUEL R. WEISS

Commissioner and ex officio Justice of the Peace.



I hereby appoint R. M. Courtney special officer to serve above writ.

SAMUEL R. WEISS,

Commissioner & ex officio Justice of the Peace.

(Indorsed): Returned and filed this 12th day of June 1912. Samuel R. Weiss, Commissioner and ex officio Justice of the Peace.

In the Commissioner's Court for Fairbanks Precinct, Fourth Division, Territory of Alaska.

J. E. Barrack Plaintiff vs. Russian Mining Co. Defendant. No. 43.—Summons.

To the United States Marshal of the Territory of Alaska, or any Deputy:

In the name of the United States of America, we command you to summon Russian Mining Co. to appear before me the undersigned, a Justice of the Peace in Fairbanks Precinct in said Territory, on the eighteenth day of June 1912 at the hour of three o'clock in the afternoon of said day at my office in the Court House at Chatanika in the said precinct, to answer the complaint of J. E. Barrack founded upon account and wherein he demands 570.22 Dollars.

Given under my hand and official seal this 11 day of June 1912.

(SEAL)

SAMUEL R. WEISS

Commissioner and ex officio Justice of the Peace.

I hereby appoint R. M. Courtney Special Officer to serve above summons.

SAMUEL R. WEISS,

Commissioner & Ex officio Justice of the Peace.  
Territory of Alaska,

Fourth Division.

Fairbanks Precinct. ss.

I, R. M. Courtney, Special officer of the Territory of Alaska, Fourth Division, do hereby certify that I received the within summons on the 11th day of June 1912, and on the 11th day of June 1912, I duly served the same upon Nick Chaloff at Chatanika, in said precinct, by delivering a true copy thereof with a copy of the complaint in said action, prepared and certified by S. R. Weiss, Com'r to Nick Chaloff, a member of the defendant firm Russian Mining Co. in Fairbanks Precinct, Territory of Alaska.

Dated at Chatanika, Alaska this 11th day of June 1912

R. M. COURTNEY

Special Officer.

(Indorsed): In the Commissioner's Court, Territory of Alaska Fourth Division Fairbanks Precinct. J. E. Barrack Plaintiff vs. Russian Mining Co. Defendant. SUMMONS .....Attorneys for Plaintiff. Returned and filed this 12th day of June, 1912. Samuel R. Weiss. Commissioner and ex officio Justice of the Peace.

In the Justice's Court for the Territory of Alaska, Fourth Division, Fairbanks Precinct.

J. E. Barrack Plaintiff vs. Russian Mining Co. Defendant.

#### Undertaking for Attachment

Whereas, the above named plaintiff has commenced an action in the above entitled court to recover from the above named defendants the sum of Five hundred

seventy & 22-100 Dollars (\$570.22), on a contract for the direct payment of money and is desirous that a writ of attachment issue out of said court against property of the said defendants.

Now, Therefore, we, J. E. Barrack as principal, and ... and ... as sureties, in consideration of the issuance of said writ of attachment, do hereby jointly and severally promise and undertake in the sum of six hundred Dollars (\$600.00), that the plaintiff above named will pay all costs that may be adjudged to the above named defendants and all damages that they may sustain by reason of such attachment, if the same be wrongful or without sufficient cause, not exceeding the sum of \$600.00

In Witness Whereof we have hereunto set our hands and seals this 11th day of June, A. D., 1912.

J. E. BARRACK                      Seal.

C. E. DANFORTH                  Seal.

JOHN METZGER                   Seal.

United States of America,

Territory of Alaska

Fairbanks Precinct. ss.

C. E. Danforth and John Metzger being severally duly sworn, depose and say, each for himself: That he is a surety on the foregoing undertaking; that he is a resident within the Territory of Alaska; that he is not a counselor, or attorney-at-law, marshal, deputy marshal, clerk, commissioner, or other officer of any court, and that he is worth the sum of \$600.00 over and above all debts and liabilities in property not exempt from execution.



C. E. DANFORTH  
JOHN METZGER

Subscribed and sworn to before me on this 11 day  
of June A. D., 1912.

(SEAL)

SAMUEL R. WEISS,

A Notary Public in and for the Territory of Alaska.  
Commissioner and ex officio Justice of the Peace.

(Indorsed): Filed this 11th day of June 1912.  
Samuel R. Weiss, Commissioner.

In the Justice's Court for the Territory of Alaska,  
Fourth Division, Fairbanks Precinct.

J. E. Barrack Plaintiff vs. Russian Mining Co. De-  
fendant. No.— Affidavit for Attachment.

United States of America,

Territory of Alaska

Fairbanks Precinct. ss.

M. R. BOYD being duly sworn deposes and says:  
That he is the authorized agent of the plaintiff in  
the above entitled action, and makes this affidavit  
for the purpose of securing the issuance of a writ of  
attachment herein against the property of the said  
defendants; that the defendants above named are in-  
debted to the above named plaintiff in the sum of Five  
hundred seventy 22-100 (\$570.22) Dollars, over and  
above all legal set offs and counterclaims upon an  
account contract for the direct payment of money, to-  
wit: goods and merchandise furnished during months  
of Feby to June 1912 inclusive that the payment of  
the same has not been secured by any mortgage, lien,  
or pledge upon real or personal property; that said  
sum for which an attachment is asked in the above

entitled action, an actual, bona fide existing debt, due and owing from the said defendants to the said plaintiff, and that such attachment is not sought nor this action prosecuted to hinder, delay, or defraud any creditor or creditors of said defendant.

M. R. BOYD, Agent

Subscribed and sworn to before me on this 11 day of June A. D. 1912.

(SEAL)

SAMUEL R. WEISS

A Notary Public in and for the Territory of Alaska.

(Indorsed): Filed this 11th day of June 1912.  
Samuel R. Weiss, Commissioner.

In the Justice's Court of the Territory of Alaska, Fourth Division, Fairbanks Precinct, Before Samuel R. Weiss, Commissioner and ex officio Justice of the Peace.

J. E. Barrack, Plaintiff, vs. Russian Mining Co., defendants. S. S.

Plaintiff states:

1. That defendants are now and have been, during all times hereinafter mentioned, a copartnership operating a lay on Dis. Claim, Chatanika, said Territory under the firm name as herein mentioned.

2nd. That during the months of Feby to June 1912 inclusive, plaintiffs sold and delivered to defendants goods and merchandise to the value of \$622.20 and that same is now due and remains wholly unpaid except the sum of \$50.00.

Wherefore plaintiff demands judgment in the sum of \$570.22 with costs of ths action.

J. E. BARRACK,

By M. R. BOYD, Agt.

Territory of Alaska

Fourth Division

Fairbanks Precinct ss.

M. R. Boyd being sworn says: That he is the agent of plaintiff,, has read foregoing complaint, and that same is true to the best of his knowledge and belief.

M. R. BOYD.

Subscribed and sworn to before me this 11 day of June 1912.

(SEAL)

SAMUEL R. WEISS,

Commissioner and ex officio Justice of the Peace.

(Indorsed): J. E. Barrack vs. Russian Mining Co. Filed this 11th day of June, 1912. Samuel R. Weiss Commissioner.

In the Justice's Court for Fairbanks Precinct Territory of Alaska Fourth Division before Samuel R. Weiss, Commissioner and Ex Officio Justice of Peace at Chatanika. .

J. E. BARRACK Plaintiff vs. Russian Mining Co. No. 43.

June 11 On the 11th day of June 1912 J. E. Barrack filed a complaint against the Russian Mining Co. defendants alleging that the defendants are justly indebted to him in the sum of Five Hundred and seventy 22-100 Dollars.

June 11 I have appointed R. M. Courtney Special Officer to serve the within process

June 11 Summons issued to Special Officer requiring The Russian Mining Co. to make answer on or before the 18th of June at the hour of three



o'clock in the afternoon of said day.

June 11 Affidavit for Attachment taken and filed.

June 11 Undertaking for Attachment taken and filed

June 11 Writ of Attachment issued to Special Officer R. M. Courtney.

June 11 Summons returned and filed endorsed as follows:

Territory of Alaska

Fourth Division

Fairbanks Precinct ss.

I, R. M. Courtney, Special officer of the Territory of Alaska Fourth Division do hereby certify that I received the within summons on the 11th day of June 1912 and on the 11th day of June 1912 I duly served the same upon Nick Chaloff at Chatanika in said precinct by delivering a true copy thereof together with a copy of the complaint in said action prepared and certified by S. R. Weiss, Com'r., to Nick Chaloff in Fairbanks precinct Territory of Alaska. Dated at Chatanika Alaska this 11th day of June 1912.

R. M. COURTNEY

Special Officer.

June 11 Writ of Attachment returned with Special Officer endorsement thereon as follows:—

I hereby certify and return that I received the within writ of Attachment on the 11th of June 1912. at the hour of 15 minutes past one o'clock in the afternoon and that I executed the same on the same 11th day of June 1912 at the hour of 30 minutes past one o'clock in the afternoon, by delivering a copy

thereof duly certified by me to Nick Chaloff one of the members of the firm of the Russian Mining Co., at Chatanika Alaska and by attaching all the right title and interest of said defendants in and to one lot of wood one boiler house and all the machinery contained therein and in the mine of the said defendants or on the surface of said mine and one mess house together with all provisions, ranges, cooking utensils contained therein all being situated on Discovery Claim, Chatanika River in the Fairbanks Mining & Recording District, Territory of Alaska.

Dated at Chatanika Alaska this 11th day of June 1912

June 18

R. M. COURTNEY

Special Officer.

June 18 This case came up regularly for trial on this 18th day of June 1912 at three o'clock in the afternoon Plaintiff present; defendants absent, so case went by default. Therefore it is adjudged and ordered that J. E. Barrack do have and recover of and from the Russian Mining Co. Five Hundred seventy 22-100 Dollars with interest at 8 per cent per annum until paid and costs taxed at \$22.70.

Let execution issue.

SAMUEL R. WEISS,

Commissioner & Ex officio Justice of Peace

June 21 Execution issued to J. E. Barrack.

Territory of Alaska

Fairbanks Precinct ss.

I, Samuel R. Weiss, United States Commissioner

and ex officio Justice of the Peace in and for the Fairbanks Precinct, Territory of Alaska, residing at Chatanika therein, do hereby certify that the within and foregoing is a full, true, and correct copy of the docket entries (as the same appear on the Civil Docket of my Court) and of the original papers (on file in my office) in cause No. 43, entitled J. E. Barrack, plaintiff, vs. Russian Mining Company, defendant, in the Justice's Court for said Precinct, at Chatanika, Alaska.

Witness my hand and official seal on this 9th day of December, 1912.

(SEAL)

SAMUEL R. WEISS

United States Commissioner and ex officio Justice of the Peace.

(Indorsed): No. 43 JUSTICE'S COURT, CHATANIKA J. E. Barrack vs. Russian Mining Company. Certified copy of original papers and docket entries. No. 1799 Defts Ex "A" Filed In the District Court Territory of Alaska, 4th Div. Nov 13, 1913. Angus McBride, Clerk. By P. R. Wagner, Deputy.

Defendants then offered in evidence certified copies of the records of Commissioner Weiss in case No. 44, entitled in the Justice's court at Chatanika, C. E. Danforth vs. Russian Mining Company, J. E. Barrack, assignee, which papers were identified by Commissioner Weiss as being certified copies of the originals.

Plaintiffs objected and said instruments were admitted over the objections of plaintiffs and marked Defendants' Exhibit B, and are in the words and



figures as follows, to-wit:

"In the Commissioner's Court for the Fourth Division, Territory of Alaska.

C. E. Danforth J. E. Barrack, Assignee, vs. Russian Mining Co. Marshal's Return on Execution.

I HEREBY CERTIFY AND RETURN, that I received the annexed Writ of Execution on the 26th day of June 1912, at Chatanika, Alaska; and that on the same day I duly executed the same by levying upon certain personal property of the above named defendants, Russian Mining Co. for a more accurate description of which I refer to the return on the case of J. E. Barrack vs. Russian Mining Co.; by posting a notice of the time and place of sale in three public places within five miles of the place where said sale was to take place, to wit: one on the boiler house of the above named Defendants on Discovery Claim Chatanika Flats one on the Post Office at Cleary; and one at the Town of Chatanika; all of said places being in the Fairbanks Precinct, Territory of Alaska. And that on the 9th day of July 1912, at 11 o'clock A. M. at the boiler house on Discovery Claim Chatanika Flats, being the time and place appointed for said sale, I did at the request of J. E. Barrack, Assignee, by public proclamation, then and there made, postpone said sale until July 16th. 1912, at 11 o'clock A. M. of said day; that on the 16th day of July 1912, at 11 o'clock of said day, at the same place I did at the request of J. E. Barrack, Assignee, in like manner again postpone the said sale until the 23rd day of July 1912, at 11 o'clock of said day at the same place;

that on July 23rd 1912 all of said personal property was sold on the prior Execution of J. E. Barrack vs. Russian Mining Co. and after said prior Execution of J. E. Barrack vs. Russian Mining Co. was fully satisfied, there was found a balance of Ninety and 60-100 Dollars (\$90.60) which is hereby applied to the satisfaction of the execution annexed.

Dated at Fairbanks, Alaska, July 27th. 1912.

H. K. LOVE, U. S. Marshal.

By S. B. Waite, Deputy.

Marshal's Fees \$4.00    Mileage 13.20

In the Justice's Court for the Territory of Alaska,  
Fourth Division. Fairbanks Precinct.

C. E. Danforth Plaintiff vs. Russian Mining Co.  
Defendant. No.— Execution.

The President of the United States of America,  
To the Marshal of Said Division and Territory, or  
any Deputy, Greeting:

WHEREAS, C. E. Danforth of Fairbanks Precinct, Territory of Alaska recovered judgment against Russian Mining Co., of Chatanika, Alaska, in the Justice's Court for the Fairbanks Precinct, said Division and Territory, on the 18th day of June, 1912, for the sum of Four hundred and thirty seven 55-100 Dollars, with interest thereon at the rate of eight per cent. per annum until paid, and costs of suit, amounting to twenty two 70-100 Dollars.

THEREFORE, in the name of the United States of America, you are hereby commanded to levy upon, seize and take into execution the personal property of the said Russian Mining Co. in your Division of

said District sufficient, subject to execution, to satisfy said Judgment, interest and increased interest, costs and increased costs, and make sale thereof according to law, and make return of this writ within thirty days from the date hereof.

Herein fail not, and have you then and there this writ.

Witness my hand and the seal of said court hereto affixed this 21st day of June A. D. 1912.

(SEAL)

SAMUEL R. WEISS

Commissioner and Ex Officio Justice of the Peace.

(Indorsed): 4th Div. Dist of Alaska Received June 27 1912 Office of U. S. Marshal Fairbanks, Alaska. Marshal's Docket No. 3876. Writ docketed June 27, 1912. Return docketed...191... No... Justice's Court Territory of Alaska Fourth Division. C. E. Danforth Plaintiff vs. Russian Mining Co. Defendant. EXECUTION Filed Aug 1st, 1912. Samuel R. Weiss Commissioner.

NO.....JUSTICE'S COURT.

C. E. DANFORTH vs. RUSSIAN MINING CO.

Office of the Marshal,

Fourth Division, Territory of Alaska.

Chatanika Alaska June 11 1912.

To C. H. WARD

You will please take notice, that all moneys, goods, credits, effects, debts due or owing, and all other personal property in your possession, or under your control, belonging to the defendant named in the writ, of which the annexed is a copy, are attached by virtue of said writ; and you are hereby notified not



to pay over, transfer, deliver, or in any way part with same to anyone but myself.

Please furnish a statement

R. M. COURTNEY

Special Officer.

Chatanika Alaska June 11 1912 2:30 P. M.

I have nothing of any nature whatsoever belonging to the above Russian Mining Co.

C. H. WARD

Special Officer's Fees \$4.00

In the Justice's Court for Fairbanks Precinct, Fourth Division. Territory of Alaska.

Before SAMUEL R. WEISS, Commissioner and ex-officio Justice of the Peace.

C. E. Danforth Plaintiff, vs. Russian Mining Co., Defendants. Special Officer's Inventory of Merchandise taken under Writ of Attachment.

I HEREBY CERTIFY and return that the following is a full, true and correct statement and inventory of the groceries only attached by me in pursuance of the Writ of attachment issued in the above entitled action on the 11th day of June, 1912, and now held by me subject to the order of the above Court:

145 lbs. Beef (cold storage) 10 lbs. Coffee, 5 lbs. Baking Powder, 1 lb. Tea, 6 1-gal. cans Apples, 18 cans Tomatoes, 14 cans Beets, 25 lb. box Dried Apples,  $\frac{3}{4}$  bx. Ivory Soap, small size, 3, sx. Rolled Oats 9's, 18 cans Fig Pudding, 150 lbs Bayo Beans, 40 lbs. Small White Beans, 16 pcs. Bacon, 5 lbs. Split Peas, 1.2 Gal. Molasses, 27 cans Cream, About

15 lbs. Sugar, 26 pkgs. Corn Starch, 50 lbs. Flour, 17 cans Tomatoes, 6 cans Olive Oil,  $\frac{1}{2}$  Gals 28 cakes Armour's White Soap, 11 cans Pumpkin, 5 lbs. Salt, 3 cans Beets, 7 cans Tomato Catsup, 1 gals., Part can Coffee, about 15 lbs., 1 Box Candles.

Dated at Chatanika, Alaska, this 11th day of June, 1912.

R. M. COURTNEY

Special Officer.

In the Justice's Court for Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska.

Before Samuel R. Weiss, Commissioner and ex-officio Justice of the Peace.

C. E. Danforth Plaintiff, vs. Russian Mining Co., Defendants. Special Officer's Return on Writ of Attachment.

United States of America

Territory of Alaska

Fourth Division ss.

I HEREBY CERTIFY AND RETURN that I received the annexed writ of Attachment on the 11th day of June, 1912, at the hour of 20 minutes past one o'clock in the afternoon, and that I executed the same on the same 11th day of June, 1912, at the hour of 40 minutes past one o'clock in the afternoon;

By delivering a copy thereof duly certified by me to Nick Chaloff, one of the members of the firm of the Russian Mining Co., at Chatanika, Alaska, and by attaching all the right, title and interest of the above named defendants in and to one lot of wood, one boiler house and all the machinery contained

therein and in the mine of the said defendants or on the surface of said mine, and one mess house together with all provisions, ranges, cooking utensils contained therein, all being situated on Discovery Claim, Chatanika River, in the Fairbanks Mining and Recording District, Territory of Alaska.

Dated at Chatanika, Alaska, this 11th day of June, 1912.

R. M. COURTNEY

Special Officer.

Special Officer's fees, \$4.00.

In the Commissioner's Court (Chatanika) for Fairbanks Precinct, Fourth Division, Territory of Alaska.

C. E. Danforth Plaintiff vs. Russian Mining Co. Defendant. No. 44. Writ of Attachment.

The President of the United States of America, To the Marshal of the Territory of Alaska, Fourth Division, or to his Deputy, Greeting:

WHEREAS, C. E. Danforth hath complained that Russian Mining Co. is justly indebted to him to the amount of Four hundred thirty seven Dollars and fifty cents and the necessary affidavit and undertaking herein having been filed as required by law.

WE THEREFORE COMMAND YOU, That you attach and safely keep all the personal property of the said defendant not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, as above stated, to be found in your Division of said Territory, and as shall be of value sufficient to satisfy the said debt and the costs and disbursements of said plaintiff herein. And of this



writ make due service and return.

Given under my hand and official seal this 11th day of June 1912.

(SEAL) SAMUEL R. WEISS

Commissioner and ex officio Justice of the Peace.

I hereby appoint R. M. Courtney Special Officer to serve above writ.

SAMUEL R. WEISS

Commissioner and ex officio Justice of the Peace.

(Indorsed): Returned and filed this 12th day of June 1912. Samuel R. Weiss, Commissioner and ex officio Justice of the Peace.

In the Commissioner's Court for Fairbanks Precinct, Fourth Division, Territory of Alaska.

C. E. Danforth Plaintiff vs. Russian Mining Co. Defendant. No. 44. Summons.

To The United States Marshal of the Territory of Alaska, or any Deputy:

In the name of the United States of America, we command you to summon Russian Mining Co. to appear before me the undersigned, a Justice of the Peace in Fairbanks Precinct in said Territory, on the 18th day of June 1912 at the hour of 4 o'clock in the afternoon of said day at my office in the Court House at Chatanika in the said precinct, to answer the complaint of C. E. Danforth founded upon account and wherein he demands four hundred thirty seven & 50-100 Dollars.

Given under my hand and official seal this 11th day of June 1912.

(SEAL) SAMUEL R. WEISS

Commissioner and ex officio Justice of the Peace.

I hereby appoint R. M. Courtney special officer to serve above summons. SAMUEL R. WEISS

Commissioner & ex officio Justice of the Peace.  
Territory of Alaska,  
Fourth Division  
Fairbanks Precinct ss.

I, R. M. Courtney, special officer of the Territory of Alaska, Fourth Division, do hereby certify that I received the within summons on the 11th day of June 1912, and on the 11th day of June 1912 I duly served the same upon Nick Chaloff at Chatanika in said precinct, by delivering a true copy thereof together with a copy of the complaint in said action, prepared and certified by S. R. Weiss, Com'r, to Nick Chaloff, one of the members of the firm of Russian Mining Co. in Fairbanks Precinct, Territory of Alaska.

Dated at Chatanika, Alaska this 11th day of June 1912.

R. M. COURTNAY Special Officer

(Indorsed): No.— In the Commissioner's Court Territory of Alaska Fourth Division, Fairbanks Precinct. C. E. Danforth Plaintiff vs. Russian Mining Co Defendant Summons. Returned and filed this 12th day of June 1912 SAMUEL R. WEISS Commissioner and ex officio Justice of the Peace.

In the Justice's Court for the Territory of Alaska, Fourth Division, Fairbanks Precinct.

C. E. Danforth Plaintiff vs Russian Mining Co. Defendant. No.— Undertaking for Attachment.

WHEREAS, the above named plaintiff has commenced an action in the above entitled court to recover from the above named defendants the sum of Four hundred thirty seven & 50-100 (\$437.50) Dollars, on a contract for the direct payment of money and is desirous that a writ of attachment issue out of said court aganst property of the said defendants.

NOW, THEREFORE, we C. E. Danforth as principal, and M. R. Boyd and John Metzger as sureties, in consideration of the issuance of said writ of attachment, do hereby jointly and severally promise and undertake in the sum of Four hundred fifty Dollars \$(450.00), that the plaintiff above named will pay all costs that may be adjudged to the above named defendants and all damages that they may sustain by reason of such attachment, if the same be wrongful or without sufficient cause, not exceeding the sum of \$450.00

IN WITNESS WHEREOF we have hereunto set our hands and seals this 11th day of June, A. D., 1912.

M. R. BOYD                      Seal.

JOHN METZGER      Seal.

United States of America,

Territory of Alaska

Fairbanks Precinct.    ss.

M. R. Boyd and John Metzger being severally duly sworn, depose and say, each for himself: That he is a surety on the foregoing undertaking; that he is a resident within the Territory of Alaska; that he is not a counselor, or attorney-at-law, marshal, depu-



ty marshal, clerk, commissioner, or other officer of any court, and that he is worth the sum of \$500.00 over and above all debts and liabilities in property not exempt from execution.

M. R. BOYD

JOHN METZGER

Subscribed and sworn to before me on this 11th day of June A. D., 1912.

(SEAL)

SAMUEL R. WEISS

A Notary Public in and for the Territory of Alaska.

Commissioner and ex officio Justice of the Peace.

(Indorsed:) Filed this 11th day of June, 1912.  
Samuel R. Weiss, Commissioner.

In the Justice's Court for the Fairbanks Precinct  
Territory of Alaska, Fourth Division.

C. E. Danforth Plaintiff vs. Russian Mining Co.  
Defendant. No.— Affidavit for Attachment.

United States of America,

Territory of Alaska

Fairbanks Precinct. ss.

C. E. Danforth being duly sworn deposes and says: That he is the plaintiff in the above entitled action, and makes this affidavit for the purpose of securing the issuance of a writ of attachment herein against the property of the said defendant; that the defendant above named are indebted to the above named plaintiff in the sum of Four hundred thirty seven & 50-100 Dollars, (\$437.50), over and above all legal setoffs and counterclaims upon an account contract for the direct payment of money, to-wit: for medical services rendered the defendants and the as-

signed account of Paul Ringseth for goods and merchandise furnished the defendants. That the payment of the same has not been secured by any mortgage, lien, or pledge upon real or personal property; that said sum, for which an attachment is asked in the above entitled action, is bona fide, an actual, existing debt, due and owing from the said defendants to the said plaintiff, and that such attachment is not sought nor this action prosecuted to hinder, delay, or defraud any creditor or creditors of said defendant.

.....  
 Subscribed and sworn to before me this 11th day of June A. D., 1912.

(SEAL)

SAMUEL R. WEISS

A Notary Public in and for the Territory of Alaska.  
 Commissioner and ex officio Justice of the Peace.

(Indorsed): Filed this 11th day of June 1912.  
 Samuel R. Weiss, Commissioner.

In the Justice Court for Fairbanks Precinct, 4th  
 Division, Territory of Alaska, Before S. R. Weiss,  
 Commissioner & Ex Officio Justice of the Peace.

C. E. Danforth, Plaintiff vs. Russian Mining Co.  
 Dft. Complaint. No.—

For cause of action plaintiff complains and alleges:

1. That the defendants are now and have been during all the times hereinafter mentioned a copartnership operating a lay on Discovery Claim on Chatanika, said Territory, Division & Precinct, under the firm name above mentioned.

2. That during the months of December, 1911, to April 1912, inclusive, this plaintiff furnished defend-

ants, at their request, medical aid, attendance, medicines and supplies to the amount of Two hundred fifty Dollars (\$250.00); that the same is now due and remains wholly unpaid.

3. That on the 11th day of June 1912, for a valuable consideration, this plaintiff became the owner of an account of Paul Ringseth to the amount of One hundred eighty-seven & 50-100 Dollars; that the same is now due and remains wholly unpaid.

Wherefore plaintiff demands judgment for the sum of Four hundred thirty seven & 50-100 Dollars with costs.

DR. C. E. DANFORTH

Territory of Alaska Fairbanks, Precinct—ss.

C. E. Danforth, being first duly sworn on oath, deposes and says: I am the plaintiff in the foregoing complaint named; I have read the same, know the contents thereof, and the same is true as I verily believe.

DR. C. E. DANFORTH.

Subscribed and sworn to before me this 11th day of June 1912.

SAMUEL R. WEISS

Commissioner & ex-officio Justice of the Peace.

(SEAL)

(Indorsed): C. E. Danforth vs Russian Mining Co. Filed this 11th day of June 1912 Samuel R. Weiss Commissioner.

In the Justice's Court for the Fairbanks Precinct Territory of Alaska Fourth Division Before Samuel R. Weiss Commissioner & Ex-Officio Justice of Peace at Chatanika.

C. E. Danforth Plaintiff vs. Russian Mining Co., Defendants. No. 44.



June 11 On this 11th day of June 1912 C. E. Danforth filed complaint against the Russian Mining Co., defendants alleging that the defendants were justly indebted to him in the sum of \$437.50-100.

June 11 I have appointed R. M. Courtney Special Officer to serve the within process.

June 11 Summons issued to Special Officer R. M. Courtney requiring that defendants make answer on or before the 18th day of June 1912 at the hour of 2 o'clock in the afternoon of said day.

June 11 Affidavit for Attachment taken and filed.

June 11 Undertaking for attachment taken and filed.

June 11 Writ of attachment issued to Special Officer R. M. Courtney.

Summons returned and filed endorsed as follows:

I, R. M. Courtney, Special Officer of the Territory of Alaska, Fourth Division, do hereby certify that I received the within summons on the 11th day of June 1912, and on the 11th day of June 1912, I duly served the same upon Nick Chaloff at Chatanika in said precinct by delivering a true copy together with a copy of the complaint in said action prepared & Certified by S. R. Weiss, Com'r., to Nick Chaloff in Fairbanks precinct Territory of Alaska.

Dated at Chatanika, Alaska, this 11th day of June 1912.

R. M. COURTNEY, Special Officer.

June 11 Writ of Attachment returned with Special Officer's endorsement thereon as follows:

I hereby certify and return that I received the annexed Writ of Attachment on the 11th of June 1912 at the hour of 20 minutes past one o'clock in the afternoon and that I executed the same at the hour of 40 minutes past one o'clock in the afternoon of same day, by delivering a copy thereof certified by me to Nick Chaloff, one of the members of the firm of the Russian Mining Co. at Chatanika Alaska and by attaching all the right title and interest of said Russian Mining Co. in and to one lot of wood, one boiler house and all the machinery contained therein and in the mine of said defendants or on the surface of said mine and one mess house together with all provisions, ranges, cooking utensils contained therein, all being situated on Discovery Claim Chatanika River in Faibanks Mining & Recording District Territory of Alaska.

Dated at Chatanika Alaska this 11th day of June 1912.

R. M. COURTNEY, Special Officer.

June 18 This case came up regularly for trial on this 18th day of June 1912, at the hour of 2 o'clock in the afternoon. Plaintiffs present. Defendants absent so case went by default. Therefore it is adjudged and ordered that C. E. Danforth do have and recover of and from the Russian Mining Co., defendants, \$437.50-100 with interest at 8 per cent per annum and costs taxed at \$22.70. Let execution issue.

SAMUEL R. WEISS

Commissioner & ExOfficio Justice of Peace.

June 21 Execution issued C. E. Danforth.

Aug 5 Received Thirty four 34-100 Dollars on  
above Judgment

JOHN BARRACK.

Territory of Alaska Fairbanks Precinct,—ss

I, Samuel R. Weiss, United States Commissioner  
and ex officio Justice of the Peace in and for the  
Fairbanks Precinct, Territory of Alaska, residing  
at Chatanika therein, do hereby certify that the  
within and foregoing is a full, true, and correct copy  
of the docket entries (as the same appear on the  
Civil Docket of my Court) and of the original papers  
(on file in my office) in cause No. 44, entitled C.  
E. Danforth, plaintiff, vs. Russian Mining Company,  
defendant, in the Justice's Court for said precinct, at  
Chatanika, Alaska.

Witness my hand and official seal on this 9th  
day of December, 1912.

SAMUEL R. WEISS

United States Commissioner and ex-officio Justice  
of the Peace.

(SEAL)

Indorsed: No. 44 Justice's Court, Chatanika, C. E.  
Danforth vs. Russian Mining Company. Certified  
copy of original papers & docket entries. No. 1799  
Deft's Ex "B" Filed in the District Court Territory of  
Alaska, 4th Div. Nov 13, 1913, Angus McBride  
Clerk By P. R. Wagner Deputy."

I know the amount of the wood that was attached  
in those two suits, Exhibits A and B; I think in the  
attachment it states there are 75 cords, that was when  
Mr. Courtney attached it. I have no personal knowl-



edge as I did not go up there. After it was repiled, it could be measured better and it shows 72 cords on the return of the execution, I think it states 72 cords. Mr. Barrack had it repiled before the sale, so that it could be measured more accurately.

Witness Excused.

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Upon inquiry by attorneys for defendants, Mr. Clegg, attorney for plaintiffs, stated that the plaintiffs were making no claim to the boiler situate on the ground and described in the complaint.

JOHN BARRACK, a witness for defendant, after being first duly sworn, testified in substance as follows, UPON DIRECT EXAMINATION BY MR. CLARK:

My name is John Barrack. I am familiar with the proceedings in the Chatanika suit, entitled J. E. Barrack vs. Russian Mining Company. J. E. Barrack is my son and the business was conducted in his name in June 1912. On or about the 11th of June and for about eight or nine days thereafter, I was on or about the works of the Russian Mining Company and examined the machinery that was on the ground and was there with it a good deal and I know about the wood and have seen most all of it, in fact.

"Q. What was the first time that you went on there in that neighborhood of the 11th? Was it on that day?

A. I was there that day that Courtney was there, yes.

Q. Were you there when Courtney attached?

A. I was there about ten minutes later.

Q. Where were the men at that time?

A. Most of them were in the bunk house.

Q. In the bunk house?

A. Yes. In the bunk house and the mess house.

Q. Did you look around and see if any notices were up?

A. I didn't see any notices anywhere there.

Q. You were around there for how many days?

A. I was there for eight or nine days.

Q. Were you around in the various buildings?

A. I was around in the buildings. I was looking after some stuff that they had on a lease and option from us, and I was gathering up some of them.

Q. That was other property.      A. Yes sir.

Q. Were any of the men that had been working for the Russian Mining Company around the works during the eight or nine days that you were there?

A. They were there when I first went there, and I didn't see any of them there—I think there were two there, two men that I recognized. I didn't know all of them personally. They were around there for two or three days after the attachment.

Q. What were they doing?

A. They didn't appear to be doing anything. "After the wood was attached, I had Smith, of Smith & Durand, pile it up and I paid for it myself. Smith measured it and so did John Durand and I think Paul Ringseth was there at the measuring of it. I was there too. I think there were 72 cords in the pile, I would be very sure between 72 and 75. The wood

was afterwards sold at marshal's sale. It was put up in two lots, there was one lot of it worth more than the other, and I think, if my recollection is correct, that the whole lot of wood brough \$305.00. It was sold at public auction. There was quite an attendance and quite a lot of bidding. In regard to the hoist, it was in pretty bad condition. I have been engaged in the machinery business off and on for about fifty years and have done considerable in the way of buying and selling new and second hand machinery, and am acquainted with the value of such in this section of the country. I know a good deal about it. I have been handling machinery in the north since 1899 and deal very frequently in second hand machinery. From my experience, I would consider that I was a judge of the value of machinery—second-hand machinery, both in buying and selling the same. I examined the hoist that was on the ground on the 11th of June, 1912. Well, that hoist was pretty much on the bum, it was in poor condition. I wouldn't give \$50.00 for a hoist in the condition it was in. Afterwards we brought it to town and fixed it up in good shape and our books show it cost about \$100.00. I would say its value on the ground on the 11th of June would be about \$50.00. I had seen the hoist working before and had helped repair it. I was present once when it stuck and left Serafino hanging in the shaft for at least an hour. It simply couldn't come up and couldn't go down. In regard to the carrier, we sell a carrier like that, in good shape, for \$50.00. The one in question was in



fair shape, worth about \$50.00. The bucket was in poor shape, was worth about \$20.00. The bucket block goes with the carrier. In regard to the cable, I never examined the standing cable. There was no hoisting cable belonging to it, and the standing cable I never examined, but it looked to be in fair condition. I should judge it would be worth about \$50.00. I was there the day the machinery was sold. I bought it myself from the marshal. None of it has been sold since, it is all intact. The wood was sold to John Durand and was burned up. The wood and machinery was sold for \$550., something like that. That included the engine, the hoist, the carrier, the bucket and cable and the boiler also. The articles were not sold separately, just put in a lump and everybody bid on it, and it included the boiler. The price, I think was \$550. or \$560., I do not recollect. The boiler, if it is fit for service, is worth \$225. We sold one just like it for \$225, second hand. Counting the boiler worth \$225. the balance would be worth about \$325. She wouldn't be worth any more than that. There is better machinery sold for less money.

“Q. You say you got there about ten minutes after Mr. Courtney arrived.

A. Yes sir. I meant to come down with him, but I wasn't in time.

Q. About what time in the day was it that he was there?

A. It was before noon sometime, but I can't tell you just to the minute what time it was.

Q. Did you see Mr. Ward around there at that

time? A. No. I didn't see Ward.

Q. Did you see any members of the Russian Mining Company?

A. I seen two men, but only two; and I asked Courtnay if he had seen them, and he said he had.

Q. Some of the laboring men were there?

A. Some of the laboring men were there. Yes.

Q. And all the time you were around there gathering up your own machinery and looking after these other matters, you never saw any notices of any description stuck up in any part of the place.

A. No sir. I was down there ten minutes after Courtnay stuck up his notices. But there were no notices on the wood or on the buildings.

Q. During the time you were there, did any of these men come to you and claim any of this machinery?

A. I was talking with King. And King told me he was going to go into town and get advice in the matter.

Q. Was there any other claim made at any time?

A. That is the only time I talked with anybody that seemed to have any authority. I was talking with the Jap, the cook—

UPON CROSS-EXAMINATION BY MR. CLEGG.

I think the wood was bought in for \$305., I wouldn't be right sure from memory, because I have no date with me now to show. I know the value of wood out there. Ringseth sold a lot of it for \$8.00 and some he sold for \$6.00 and some for \$5.00. It depends upon the character of the wood and how far they

have to haul it. I assisted in measuring the wood and was there when it was completed. My measurement, from memory, is between 72 and 75 cords, right to a cord I can't say. We had a hard time pulling it out of the mud, Smith and myself. We measured every stick of it that we knew. I know the machinery, exclusive of the boiler, was in pretty bad shape. I make a business of buying second hand machinery of that character and then fixing it up and selling it again. I admit our object is always to buy it as cheap as possible and to sell it at just as high a price as we can sell it, yes sir. Some of the wood was poor and water-soaked and I think if you get \$4.00 a cord for it you would be getting a good value. Some of it was not in the mud. The long wood will shrink forty percent because it was very small wood, and when you come to cut it up it would shrink. I think if they get \$4.00 a cord they will be getting a good price, or \$5.00. Good wood sells for \$6.00 and \$7.00 a cord, but this wood was a good deal of it brush.

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S. B. WAITE, a witness for defendants, after being first duly sworn, testified in substance as follows, UPON DIRECT EXAMINATION BY MR. CLARK:

My name is S. B. Waite. I was a deputy marshal under Mr. H. K. Love in July 1912. I remember the two suits entitled J. E. Barrack vs. Russian Mining Company and C. E. Danforth and J. E. Barrack, assignee vs. Russian Mining Company. I made the sales under execution issued in said actions. I have examined a certified copy of the records of the Com-



missioner at Chatanika, marked Defendants' Exhibit A. I remember, to some extent, the circumstances of the sale of the personal property under that execution, and I made the return thereon. I cannot say that it is a correct copy of the writ shown in this instrument, unless I compared them. I remember, however, making the return to the office here in Fairbanks and mailing it to the Commissioner at Chatanika. I remember there were a number of bidders for the property, the wood wasn't closely piled—it is in the condition that wood is usually around a mining claim. I made no special effort to see if there were any notices, other than the attachment notices, posted upon the ground.

UPON CROSS EXAMINATION BY MR. CLEGG:

I was acting in the capacity of Deputy U. S. Marshal of H. K. Love, the defendant in this action, at the time I made said sale.

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BAPTISTE SERAFINO, heretofore called for plaintiffs, was thereupon recalled to testify for defendants, and testified in substance as follows, UPON EXAMINATION BY MR. CLARK:

There were eleven partners in the Russian Mining Company, ten or eleven; I don't know their names. When I was there, there were about ten or eleven working altogether, some of them quit. There were four members remained there. I don't know that there were sixteen members. Neither Carl Post, Joe Jankowski nor Ivan Zalliper were members of the firm. Ivan Zalliper is known as

Baptiste. I don't know whether or not Ivan Zalliper was a member of the firm—there may have been a man there of that name, but I don't know. The names of the four partners who were there were Nick Chaloff, Walter Rosin, Lao—I don't know his other name, and Cosma. I don't know how many of those men that were working there were members of the Russian Mining Company. I would say that they were not. The list I had yesterday was the list of men that were working. None on the list were members of the firm—that is on the list given me on the 11th of June. The three that signed there were partners, but in the list of names there were no partners.

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JOHN DURAND, a witness for defendants, being first duly sworn, testified in substance as follows  
UPON DIRECT EXAMINATION BY MR. CLARK:

My name is John Durand. I am mining on the lower end of Dome Creek on the Chatanika Flats. I am acquainted with the ground the Russian Mining Company was working in 1912. I purchased from Mr. Barrack, after Marshal's sale, some of the property that was sold as the property of the Russian Mining Company. I was there at the time of the sale. I helped measure the wood on the ground. Some of it had been piled, but most of it was scattered all over the ground. It was in the water. The water was running right through it. After we got it piled up, we measured it. I do not remember exactly, but it was in the neighborhood of sixty cords, somewhere in that neighborhood, I cannot remember exactly. I

considered it very poor wood. I have been mining for a number of years and have been in the sawmill business. The wood, when I piled it and bought it, was in practically in the same condition that it was in in June 1912, except that we picked it up out of the water. I have bought considerable wood, considered that wood was a poor quality. I would consider the market value of the 16-ft wood at that time to be \$5. a cord and the market value of the 4-ft. wood between \$7. and \$8. I think I offered \$7.50 for it in the first place. I afterwards bought the wood. I am somewhat acquainted with the value of second hand machinery and have handled quite a lot of it. I examined the hoist used by the Russian Mining Company after the works had closed down. I used it for a while, that is, after I took possession. I just had the use of the hoist, I did not buy it. I got possession of it sometime in June, shortly after the marshal sold it. It was then in very poor condition. For my use I considered it was of no value. I didn't use it, I threw it out. I never used the bucket, it was a worn out bucket. I didn't use it at all. I got a bucket from Joe Ward, so I never gave the bucket any consideration whatever. The reason I didn't use the bucket was because I didn't think it fit for use. I saw the hoist several times when the Russian Mining Company was using it, saw it in operation. It was a poor running piece of machinery. I paid \$210 for the wood.

UPON CROSS EXAMINATION BY MR. CLEGG:

4-ft wood was worth between \$7.00 and \$8.00 per



cord—that particular wood. The 16-ft. wood, about \$5. per cord. The sixteen-ft wood was worth \$8.00 per cord I guess. I considered that it would be worth that to me at that time. There were in the neighborhood of 50 cords of 16-ft wood, or probably a few cords over. I made an effort to measure it. I did it by just going over the piles. It was scattered all over the ground. We kind of bunched it. After Mr. Barrack bought it, he told me to go ahead and have it piled, which I did. We had a man on pretty near two days, piled about sixty cords, just picked up out of the water what was laying in the water, and piled it on top of the wood that was out on dry ground. I don't remember exactly how much there was. I paid \$210. for it. I figured I was buying in the neighborhood of 60 cords, or a little over. I don't know exactly how many cords there was. We attempted at the time to make a careful estimate of it. Barrack was anxious to get rid of it and I was anxious to buy. That was what I paid him for the wood that was actually on the ground. I gave Mr. Barrack a check for it. I used Joe Ward's machinery. I didn't move my machinery up there.

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### DEFENDANTS REST.

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Thereafter the case was duly argued by attorneys for plaintiffs and defendants, and during the course of the argument of attorney for plaintiffs, he waived all claim against any property described in the complaint, save and except 120 cords of wood; one dou-

ble cylinder hoist; one carrier; one bucket and one trolley cable. After the cause had been argued to the jury, the court thereupon instructed the jury as follows:

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[Title of Court and Cause.]

**Instructions.**

**GENTLEMEN OF THE JURY:**

This is an action brought by Tom P. King and Baptiste Serafino, as trustees for certain creditors of the Russian Mining Company, a copartnership that has been doing business in this precinct, for the benefit of themselves, against R. M. Courtney and H. K. Love, to recover certain personal property which is described at length in the complaint, charging that it was taken from them by the defendants on or about the 11th day of June of last year, that the value of the property was seventeen hundred dollars, and also claiming damages for being deprived of the use of the property in the sum of three hundred dollars. They have also alleged that, prior to the commencement of the action, they made demand upon the defendants for the return and delivery of the possession of the property. The defendants have each answered, denying all of the material allegations of the complaint, and pleading special justification by reason of the fact that they claim to have taken possession of the property described in the complaint, or part of it, be reason of their official duties; that is, the defendant Courtney sets up that he was appointed a special officer to serve certain writ

of attachment issued by the commissioner's court at Chatanika, and the defendant Love sets up that, as United States marshal, he served and executed certain executions or writs for the sale of the personal property described, by virtue of these writs of execution issued in two separate actions by the commissioner's court at Chatanika. And the defendant Love further sets up that there was no instrument in writing conveying this property to plaintiffs, and that it is necessary that any trust agreement or conveyance of the property in trust for others should be expressed in writing, and also that the conveyance, under which the plaintiffs claim, was executed for the purpose of hindering, delaying or defrauding the creditors of the Russian Mining Company, and therefore is void. The affirmative allegations of the officers are met by the plaintiffs by general denial of each of them.

In this, as in all civil cases, it is incumbent upon the plaintiff to establish by a preponderance of evidence the truth of the allegations of their complaint, and, unless they do so, your verdict should be for the defendants. However, if you find that the allegations of the complaint are established by such preponderance, and you come to consider whether or not the affirmative matter of the reply are established, it is incumbent then, if the defendants set up such affirmative matter, that they establish same by a preponderance of evidence; and, unless you should find that such matters were so established, as to them you would find for the plaintiffs.



As you understand, the principal contention between the parties is whether or not there had been a valid conveyance, from the Russian Mining Company to these men claiming as trustees for the creditors of the Russian Mining Company, prior to the time that certain attachments were levied on the 11th day of June, 1912. That, really, is the gist of the cause to be decided by you.

You are instructed that while plaintiffs in their complaint originally claimed to be entitled to the immediate possession and to be the owners of all of the property enumerated in said complaint, they have through their attorney waived their claims on the trial to all thereof except one hundred and twenty cords of wood, one double cylinder hoist, one carrier, one bucket and one trolley cable, and therefore, in the event that you should find for the plaintiffs as to these specific items, or any part thereof, your verdict should not include any others; but you should under the evidence and the preponderance thereof, as I have heretofore instructed you, fix the total value of those items included in your verdict.

The court instructs you that the Russian Mining Company had a legal right to dispose of any of the property belonging to them on the 11th day of June, 1912 for the purpose of meeting any of their obligations then due, and they had a legal right to select one set of creditors in preference to others, if they so chose, even though they were not financially able to take care of all their creditors. The law provides a remedy for such creditors as are not taken

care of under these circumstances, and the remedy is not by subsequent attachment of the same property so disposed of.

The court instructs you that in levying a writ of attachment, the United States marshal, or any other authorized officer, acts at his peril, and when he seizes the personal property of one man wrongfully as the property of another, he is answerable to such man whose property is so wrongfully seized; in the same manner as any other individual not clothed with official authority who commits a like trespass.

You are instructed that if you find from a preponderance of the evidence in this case that the Russian Mining Company was the owner of any of the property now claimed by the plaintiffs on the morning of the 11th day of June, 1912, and that on said date and prior to the levy of any attachments by defendants or either of them, they had transferred or caused to be transferred their ownership therein to plaintiffs, and that the plaintiffs, prior to the levy of said attachments, actually took possession of said property and were in possession thereof at the time of the levy of said attachments, then you would be authorized to find for the plaintiffs as to all of said property so transferred to them and by them so taken into possession.

I instruct you that every conveyance or assignment in writing or otherwise of any interest in goods or merchandise of any character or description, made with intent to hinder, delay or defraud creditors or other persons of their lawful suits, damages, for-

feitures, debts, or demands, as against the persons so hindering, delaying or defrauding, are void.

You are instructed that all conveyances, transfers or assignments, whether verbal or written, or goods or chattels, made in trust for the person making the same, are void as against the creditors, existing or subsequent, of such person.

You are instructed that every sale or assignment of personal property, unless accompanied by the delivery and the actual and continued change of possession of the thing sold or assigned, shall be presumed, *prima facie*, to be a fraud against the creditors of the vendor or assignor or subsequent purchasers in good faith and for a valuable consideration during the time said property remains in the possession of said vendor or assignor.

You are instructed that, in contemplation of law, an attaching creditor is presumed to be a purchaser in good faith, and, if you find from the evidence in this case that the Russian Mining Company owned certain machinery described in plaintiffs' complaint, and gave to C. H. Ward a bill of sale thereof, and if you also find that the Russian Mining Company still retained possession of said personal property, and that the possession thereof was not given to and retained by said Ward, then said bill of sale was, as far as the creditors of said Russian Mining Company are concerned, null and void, so, long as the possession was retained by the Russian Mining Company; and if you find that the bill of sale that was introduced in evidence was given to Ward as se-



curity for his debt, and not as an absolute conveyance, then Ward could not assign to the plaintiffs in this action any greater interest in this property than he had himself.

And, if you find from the evidence that Ward assigned to the plaintiff in this case all his interest in the property covered by the bill of sale, then, unless the plaintiffs had taken physical possession of said property before the attachment was levied by the United States marshal, in the case of J. E. Barrack, assignee, against the Russian Mining Company, such attachment would take precedence over said transfer.

You are instructed that after said attachment had been levied on the personal property described in said bill of sale—if you find such attachment was levied—said property was thereafter in the custody of the United States marshal, and it is admitted by the pleadings, and you are so instructed, that said property was in his custody until the time the same was sold at marshal's sale.

You are instructed that there cannot be two possessions of the same personal property at the same time, and, unless you find that the property described in the complaint was in the actual possession of the plaintiffs in this action when said attachments were levied—if you find the same were levied—then your verdict must be for the defendants in this action.

You are further instructed that it is incumbent upon the plaintiffs to show by a preponderance of evidence that they hold the property claimed in their complaint as trustees for a person or a class of per-

sons that can be designated with reasonable certainty, and the amount of whose claims can be ascertained by you with reasonable certainty; and that if you find that any property was held in trust by the plaintiffs for the benefit of certain creditors of the Russian Mining Company, that said property was of greater value than the amount of the claims held by the plaintiffs as trustees, and that as trustees they had secured title to said property in manner prescribed by law, then you could not bring in a verdict for the plaintiffs in any greater amount than the total amount of the claims so held by them.

In arriving at the value of the personal property described in plaintiffs' complaint, you must determine what the reasonable market value of the same was at the time and place mentioned, that is to say, the value for which it could be sold in the open market at that time and place, provided you find that there was a general market value for such property; otherwise, it would be the reasonable value to the plaintiffs at that time and place.

You are instructed that, at any time within four months after the levy of the attachments under which this property was seized and sold, the plaintiffs and persons represented by them could have had said attachment lien set aside by proceedings in bankruptcy to have said Russian Mining Company adjudged bankrupt, and said laborers who had performed labor within three months prior to such adjudication, would have had a preference in a sum not exceeding three hundred dollars; and, if there

had been sufficient property of said bankrupt to pay the same, said laborers would have received the preference to the extent of the moneys earned within three months prior to said adjudication, in a sum not exceeding three hundred dollars.

You are instructed that the judgments rendered in the commissioner's court at Chatanika under which the property was sold by the United States marshal, so far as plaintiffs are concerned, were at all times valid judgments, and the proceedings thereunder are to be considered regular until set aside by an order of the court in a direct proceeding instituted for that purpose, and that the validity of said judgments cannot be inquired into in a proceedings of this kind; that is, that said judgments, and the proceedings thereunder, are valid for the purposes of this action for transferring all the right, title and interest of the Russian Mining Company in the property under the instructions I have given you heretofore.

You are instructed that this is an action in the nature of an action in replevin, and if you find from a preponderance of evidence that the plaintiffs are entitled to the property described in the complaint, or any part thereof, your judgment should be for the return of the property, or for the payment by the defendants of the value thereof in a sum not greater than the amount of the claims, as shown by the plaintiffs' testimony, of the laborers and other creditors for whom the plaintiffs were trustees.

You, gentlemen, are the sole judges of all questions of fact, and of the credibility of the witnesses,



and the weight to be given to their testimony. Your power of judging that is not arbitrary, but should be exercised in accordance with the instructions given you by the court.

It is your duty to take into consideration all the evidence given in the case, and the testimony of each and every witness, and give to every part of the testimony such weight as in your opinion it is entitled to.

Forms of verdict have been prepared which will be handed to you. If you find for the plaintiffs, you will find the property which should be returned to them, or, if return thereof cannot be had, then find the value of the property. In any event, if you find for the plaintiff, you should find the articles to be returned, and the value of such articles, as well as the total value. If you find for the defendant, you will return a verdict finding for the defendant, without assessing value.

MR. CLARK: There was a matter that I intended to ask the court to strike out, but I will ask the court to instruct upon. There was a list presented that the men signed up for the amount of their claims. We ask the court to instruct the jury as to what weight is to be given to their claims, or what the jury should consider as evidence as to the amount the men wrote as to their claims.

MR. CLEGG: We object to that.

THE COURT: The motion to strike out would be denied.

MR. CLARK: I wasn't moving to strike. I want

the court to instruct on that point.

**THE COURT:** The court will instruct you that such list was introduced as evidence of the parties intended to be named as beneficiaries of the trust,—as the names of the parties for whom the plaintiffs were acting as trustees; and that the amounts stated on that list is not competent evidence that such amounts were due the plaintiffs except insofar as there has been other testimony given upon the trial in corroboration of the amounts. The mere fact that those amounts appear upon that list is not sufficient evidence that such sums were due them from the Russian Mining Company.

Instructions given to the jury at Fairbanks, Alaska Nov 14, 1913.

**DISTRICT JUDGE.**

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The cause was then submitted to said jury, and thereafter they returned into court and rendered their verdict, which is as follows: (Omitting the name of court and title of said cause)

“We the jury duly empanelled and sworn to hear, try and determine the issues in the above entitled action do hereby find and return a verdict in favor of plaintiffs and against defendants and that plaintiffs are the owners and entitled to the immediate possession of the following described personal property, being a portion of the property described in the complaint herein namely:—

75 cords of wood at \$5.00, \$375.00; one double cylinder hoist \$100; one carrier \$50.00; one bucket

\$25.00; one trolley cable \$25.00, all situate on placer claim Number One below on Chatanika Flats, Fairbanks Recording District, Alaska, at the time of the commencement of this action, or in case delivery thereof cannot be had to plaintiffs, then we find that plaintiffs are entitled to recover the value thereof namely Five hundred and seventy five dollars (\$575.00) from defendants.

Dated at Fairbanks, Alaska this 14th day of November 1913.

GEO. W. PENNINGTON, Foreman."

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Thereafter, and within the time prescribed by law, the defendants filed a motion for new trial, which is as follows:

[Title of Court and Cause.]

### **Motion for New Trial.**

To the Plaintiff above named and to Mr Cecil H. Clegg, his Attorney:

Now come the defendants above named and respectfully move the above entitled court to set aside the verdict rendered by the Jury duly impaneled and sworn to try the issues in the above entitled cause, which said verdict was rendered on the thirteenth day of November, A. D. one thousand nine hundred thirteen, and to grant defendants a new trial on the grounds following, to-wit:

- (1) That excessive damages were allowed to plaintiffs, and that said damages were apparently given under the influence of passion or prejudice;
- (2) Insufficient evidence to justify the verdict



rendered in said cause;

(3) Errors in law occurring at the trial and excepted to by defendants;

(4) That there is no warrant in law for the rendition of a verdict of the character of the verdict rendered by said Jury;

(5) That the evidence conclusively shows that the plaintiff is not entitled to a judgment in the amount for which said Jury rendered its verdict, or in any sum whatsoever;

(6) That the Jury, in rendering the verdict rendered in said cause, were not justified in rendering the same by any evidence introduced in said cause;

(7) That, from the evidence adduced at the trial of said action, it conclusively appears that the instrument, claimed by plaintiffs to be a bill of sale from the Russian Mining Company to C. H. Ward, was in reality a chattel mortgage, and that said chattel mortgage was void and did not transfer the title of the property described therein to said C. H. Ward, and that said C. H. Ward could not have transferred the title to said property to the plaintiffs in this action;

(8) That the plaintiffs did not prove that they were trustees for the claimants whose claims aggregated a greater sum than the sum of four hundred seventy two dollars;

(9) That the verdict of said Jury is further erroneous in this that, if plaintiffs were entitled to the possession of any property, they would be entitled to the possession of all the property set forth in

the alleged bill of sale given by the Russian Mining Company to C. H. Ward;

(10) That said verdict was apparently rendered under the influence of prejudice, and is indefensible from the standpoint of the evidence adduced or the law applicable thereto.

This motion will be made on all the papers, records, and files in the above entitled cause and on the testimony adduced in said cause.

WHEREFORE: Defendants pray that said verdict be set aside and that defendants herein be given and granted a new trial in said cause.

Fairbanks, Alaska, 17 November, 1913.

McGOWAN & CLARK,

Attorneys for Defendants."

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Thereafter said motion for new trial was duly argued and submitted to the court for decision, and overruled, to which the defendants then and there excepted; and their exception was allowed.

Thereafter and in pursuance of said verdict so rendered, and on the 9th day of December, 1913, a judgment was duly and regularly made, given and entered in the above entitled action, to the entry of which the defendants then and there excepted, and their exception was allowed.

AND NOW, in furtherance of justice and that right may be done to the petitioners, the defendants in the above entitled action present the foregoing bill of exceptions in this cause, and pray that the same may be examined and allowed and signed

and certified by the judge of this court, in the manner prescribed by law.

McGOWAN & CLARK,

Attorneys for Defendants.

Due service of the within bill of exceptions and receipt of a copy thereof are hereby acknowledged this 11th day of February, 1914.

CECIL H. CLEGG,

Attorney for Plaintiffs.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Feb. 11, 1914. Angus McBride, Clerk.

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[Title of Court and Cause.]

**Order Allowing Bill of Exceptions.**

Now on this 24th day of February, 1914, the above named defendants, by their attorneys, duly presented the foregoing bill of exceptions in the above entitled cause, for settlement and allowance, in the manner prescribed by law and the practice of this court; and it appearing to the court that said bill of exceptions was duly served and filed within the time allowed by law, and that the plaintiffs in said action did not file any proposed amendments thereto and have filed no objections to the settling thereof, and that the same is true and correct in all respects and contains all the material testimony, evidence and exhibits, or other proof whatsoever introduced by either party upon the trial of the above entitled action, and proceedings subsequent thereto, now, therefore,

IT IS ORDERED AND ADJUDGED that said bill



of exceptions be, and the same is hereby, allowed and signed as the bill of exceptions in the above entitled cause and is ordered made a part of the records in said cause.

Dated March 11, 1914.

F. E. FULLER,  
District Judge.

Due service hereof admitted this March 11, 1914.

CECIL H. CLEGG,

Attorney for Plaintiff.

Entered in Court Journal No. 12, page 875.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Mar. 11, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.

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[Title of Court and Cause.]

**Judgment.**

This cause coming on to be heard on the 13th day of November 1913, the same being one of the regular court days of the Special November 1913 term of court, for the trial thereof, the date thereof having been theretofore fixed, the plaintiffs herein being represented by Cecil H. Clegg, as attorney, and the defendants being represented by Messrs. McGowan and Clark, attorneys, and both sides having announced their readiness for trial, the same was thereupon duly proceeded with, plaintiffs introducing oral and documentary testimony before the court and a jury duly and regularly empanelled for that purpose, and thereupon said plaintiffs rested; and said defendants thereupon introduced oral and docu-

mentary evidence in their behalf and rested, and the said cause was thereafter on the 14th day of November 1913 argued to the jury by the attorneys for the respective parties thereto, and said jury thereafter, upon receiving instructions of the court, retired to consider of their verdict and on said day returned into court and announced that they had agreed upon a verdict, which said verdict was in the words and figures following to-wit, (omitting the name of court and title of said cause)

“We the jury duly empanelled and sworn to hear try and determine the issues in the above entitled action do hereby find and return a verdict in favor of plaintiffs and against defendants and that plaintiffs are the owners and entitled to the immediate possession of the following described personal property, being a portion of the property described in the complaint herein namely:—

“75 cord cords of wood at \$5.00, \$375.00; one double cylinder hoist \$100; one carrier \$50.00; one bucket \$25.00; one trolley cable \$25.00, all situate on placer claim Number One below on Chatanika Flats, Fairbanks Recording District, Alaska, at the time of the commencement of this action, or in case delivery thereof cannot be had to plaintiffs, then we find that plaintiffs are entitled to recover the value thereof namely Five hundred and seventy five dollars (\$575.00) from defendants.

Dated at Fairbanks, Alaska this 14th day of November 1913.      GEO. W. PENNINGTON,

Foreman.”

and thereafter said defendants having filed and presented and argued to the court a motion for a new trial, which was thereafter duly considered by said court and denied on the 8th day of December 1913;

NOW THEREFORE by virtue of the law and the premises and the verdict of said jury it is now and hereby ordered and adjudged that plaintiffs herein are the owners and entitled to the immediate possession of the following described personal property, being a portion of the property described in the complaint herein, namely:— 75 cords of wood of the value of Three hundred and seventy five dollars, one double cylinder hoist of the value of One hundred dollars; one carrier of the value of Fifty dollars; one bucket of the value of twenty five dollars; one trolley cable of the value of twenty five dollars, all situate on placer claim Number One below discovery on Chatanika Flats, Fairbanks Recording District, Alaska, at the time of the commencement of this action; and it is further ordered and adjudged by the court that in case redelivery thereof cannot be had and made to plaintiffs, that said plaintiffs are entitled to and do have and recover of and from the defendants herein the value thereof towit, the sum of FIVE HUNDRED AND SEVENTY FIVE DOLLARS, lawful money of the United States, and their costs and disbursements herein taxed at the sum of \$.....

Done in open court this 9th day of December 1913.

F. E. FULLER,

District Judge.

Entered in Court Journal No. 12 page 791.



(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Dec. 9, 1913. Angus McBride, Clerk. By P. R. Wagner, Deputy.

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[Title of Court and Cause.]

**Petition for Writ of Error.**

R. M. Courtney and H. K. Love, defendants in the above entitled action, feeling themselves aggrieved by the verdict of a jury, rendered herein on November 13, 1913, and the judgment of the court made and entered herein, in pursuance thereof, on December 9, 1913, against the defendants herein for the sum of five hundred and seventy-five dollars (\$575.00) and costs of suit,

Now come Messrs. McGowan & Clark, their attorneys, and petition this Honorable Court for an order allowing these defendants to prosecute a writ of error to the Honorable Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California, according to the laws in that behalf made and provided; and

WHEREAS said defendants desire a stay of execution, pending the hearing of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit,

NOW, THEREFORE, said defendants petition that an order be made fixing the amount of security which they shall give and furnish on said writ of error, and that on the giving of such security all further proceedings in this court may be suspended and stayed until the determination of said writ of

error by said Circuit Court of Appeals for the Ninth Circuit.

And your petitioners will ever pray.

Dated January 26, 1914.

McGOWAN & CLARK,

Attorneys for Defendants.

Due service admitted Jan. 26th, 1914.

CECIL H. CLEGG Attorney for Plaintiffs.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jan. 26, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.

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[Title of Court and Cause.]

**Assignment of Error.**

Come now the defendants in the above entitled cause, being the plaintiffs in error, and assign the following error as having been committed by the above named court on the trial of the above entitled action, which error the said defendants intend to and do rely upon on their writ of error to be prosecuted to the United States Circuit Court of Appeals for the Ninth Circuit:

1. The Court erred in entering the judgment of date December 9, 1913, in the above entitled action;
2. The Court erred in overruling defendants' motion for new trial;
3. The Court erred in receiving and accepting the verdict of the jury, given, made and entered in the above entitled cause on November 14, 1913;
4. The Court erred in overruling defendants' request, at the conclusion of the plaintiffs' case, for non-suit and to dismiss said action;
5. The Court erred in refusing, at the conclusion

of plaintiffs' case, upon the motion of the defendants, to direct the jury to bring in a verdict in favor of defendants;

6. The Court erred in entering any judgment against the defendant, R. M. Courtney;

7. The Court erred in refusing defendants' motion to strike out certain evidence given by Baptiste Serafino, one of the plaintiffs, said testimony being as follows:

Q. "Now state what you did under those instructions as Trustees that same day.

A. Well, we went down on the claim and took possession of it.

MR. CLARK: We object to that as calling for a conclusion and ask that it be stricken.

THE COURT: The answer may stand.

MR. CLARK: We save an objection."

8. The Court erred in permitting the introduction of plaintiffs' Exhibit No. 3, over defendants' objection, said exception and exhibit being as follows:

"MR. CLARK: We object, as we contend that there are names on there that do not belong there.

THE COURT: The paper may be admitted for the purpose stated.

(Marked Plaintiffs' Exhibit 3)

(Plaintiffs' Exhibit 3 is a list of names as follows:)

'Bozs Wucettih.

Nick Cvietovich

Mike Zizich

Enan Honlob

Alexandr Honob



Gob Ston

Alick ——

Tom King

Sam Falar

Nick Aldatoff

Shorn

Gob Jankuwzki

Call Post

Baptiste Serafino

Juan Mien Seki.'

MR. CLARK: We not an exception. (Exception allowed).

WHEREFORE the defendants pray that the judgment in the above entitled action may be reversed and that they may be allowed all things that they have lost thereby.

Dated at Fairbanks, Alaska, this 26th day of January, A. D. 1914.

McGOWAN & CLARK,

Attorneys for Defendants.

Due service of the foregoing assignment of error is hereby admitted this 26th day of January, A. D. 1914.

CECIL H. CLEGG,

Attorney for Plaintiffs.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jan. 26, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.

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[Title of Court and Cause.]

**Order Allowing Writ of Error and Fixing Bond.**

On motion of Messrs. McGowan & Clark, attor-

neys for defendants, and the filing of a petition for a writ of error, and assignment of error,

IT IS ORDERED that a writ of error be, and same is hereby, allowed, to have reviewed by the Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, the judgment heretofore made and entered herein on December 9, 1913, and that the amount of the bond on said writ of error be, and the same is hereby, fixed at the sum of One Thousand Dollars, to cover supersedeas, and costs to defendants in error.

Dated at Fairbanks, Alaska, this January 26th,  
A. D., 1914.

F. E. FULLER,

District Judge.

Due service hereof admitted this January 26th,  
A. D. 1914.

CECIL H. CLEGG,

Attorney for Plaintiffs.

Entered in Court Journal No. 12, page 846.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jan. 26, 1914. Angus McBride, Clerk.

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[Title of Court and Cause.]

**Writ of Error.**

United States of America,  
Territory of Alaska.—ss.

The President of the United States of America, to the Hon. Frederic E. Fuller, Judge of the District Court, Territory of Alaska, Fourth Division, Greeting:

Because, in the records and proceedings, as also in the rendition of a judgment dated December 9, 1913, of a plea which is in the said District Court of the Territory of Alaska, Fourth Division, before you, between Tom P. King and Baptiste Serafino, as plaintiffs, and R. M. Courtney and H. K. Love, as defendants, manifest error hath happened, to the great prejudice and damage of the said R. M. Courtney and H. K. Love, as is said and appears by the petition herein,

We, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that if said judgment be therein given, then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals, for the Ninth Circuit, in the City of San Francisco, State of California, together with this writ, so as to have same at said place, in said circuit, on the 25th day of February, A. D. 1914, that the records and proceedings aforesaid, being inspected, the said Circuit Court of Appeals for the Ninth Circuit may cause further to be done therein to correct such error, what of right and according to the laws and customs of the United States should be done.

WITNESS the Hon. EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 26th day of January, A. D. 1914.

Attest my hand and the seal of the District Court



for the Territory of Alaska, Fourth Division, at the clerk's office in Fairbanks, Alaska, on this 26th day of January, A. D. 1914.

SEAL)

ANGUS M'BRIDE,

Clerk of the District Court for the Territory of Alaska, Fourth Division.

Allowed this 26th day of January, A. D. 1914.

F. E. FULLER,

Judge of the District Court for the Territory of Alaska, Fourth Division.

Due service hereof admitted this January 26th, A. D. 1914.

CECIL H. CLEGG,

Attorney for Plaintiffs.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jan. 26, 1914. Angus McBride, Clerk.

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[Title of Court and Cause.]

**Citation on Writ of Error.**

United States of America,  
Territory of Alaska.—ss.

The President of the United States of America to Tom P. King and Baptiste Serafino, Trustees, and to Cecil H. Clegg, their Attorney, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City and County of San Francisco, State of California, within thirty days from the date of this citation, pursuant to the writ of error filed in the office of the clerk of

the District Court for the Territory of Alaska, Fourth Judicial Division, wherein R. M. Courtney and H. K. Love are plaintiffs in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in error in that behalf.

WITNESS the HON. EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, on this 26th day of January, A. D. 1914, and in the year of our Independence the one hundred and thirty-eighth.

Attest my hand and the seal of the above named District Court, at Fairbanks, Alaska, on this 26th day of January, A. D. 1914.

F. E. FULLER,  
District Judge.

Due service hereof admitted this Jan. 26th, 1914.

CECIL H. CLEGG,  
Attorney for Plaintiffs.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jan. 26, 1914. Angus McBride, Clerk.

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[Title of Court and Cause.]

**Order Relative to Supersedeas Bond on Writ of Error.**

The defendants having on this day filed their petition for writ of error from the verdict and judgment thereon, made and entered herein, to the United States Circuit Court of Appeals for the Ninth Cir-

cuit at the City of San Francisco, State of California, together with an assignment of error within due time, and also praying that an order be made, fixing the amount of security which defendants shall give and furnish on said writ of error, and that on the giving of said security all further proceedings in this court be suspended and stayed until the determination of said writ of error by said Circuit Court of Appeals for the Ninth Circuit; and said petition having been this day duly allowed and supersedeas and cost bond fixed, now, therefore,

IT IS ORDERED that upon the defendants filing with the Clerk of this court a good and sufficient bond in the sum of One Thousand Dollars, conditioned as a cost and supersedeas bond, all as provided by law, which said bond shall be approved by this court, then and thereafter all proceedings in this court shall be, and they are hereby, suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California.

Dated at Fairbanks, Alaska, this January 26th, A. D. 1914.

F. E. FULLER,

District Judge.

Due service hereof admitted this January 26th, 1914.

CECIL H. CLEGG,

Attorney for Plaintiffs.

Entered in Court Journal No. 12, page 846.



(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jan. 26, 1914. Angus McBride, Clerk.

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[Title of Court and Cause.]

**Supersedeas Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS that we, R. M. Courtney and H. K. Love, as principals, and John Barrack and J. E. Barrack, as sureties, are held and firmly bound unto the defendants in error, Tom P. King and Baptiste Serafino, Trustees, in the just and full sum of one thousand dollars (\$1,000.00), to be paid to said defendants in error, their executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, by these presents.

Sealed with our hands and dated this 26th day of January, A. D. 1914.

WHEREAS on the 9th day of December, A. D. 1913, in the District Court in and for the Fourth Judicial Division, Territory of Alaska, in a suit pending in said court between Tom P. King and Baptiste Serafino, as Trustees, plaintiffs, and R. M. Courtney and H. K. Love, defendants, a judgment was rendered against said R. M. Courtney and H. K. Love, defendants; and the said defendants having obtained a writ of error and filed a copy thereof in the office of the Clerk of said court, to reverse the judgment aforesaid, and a citation directed in the said action to Tom P. King and Baptiste Serafino, Trustees,

citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, State of California, on the 25 day of February, 1914; and

WHEREAS plaintiffs in error desire a stay of execution in the above-entitled action pending the above appeal;

Now, the condition of the above obligation is such that if the said R. M. Courtney and H. K. Love shall prosecute said Writ of Error to effect and answer and pay all judgments, damages and costs if they fail to make the said plea good, then the above obligation is to be void; otherwise to remain in full force, effect and virtue.

R. M. COURTNEY,  
H. K. LOVE,  
By JOHN A. CLARK,  
One of their Attorneys.  
Principals.

J. E. BARRACK,  
JOHN BARRACK,  
Sureties.

In the presence of JOHN A. CLARK.

O. K. as to sureties.

CECIL H. CLEGG,

Atty. for Plfs.

United States of America,

Territory of Alaska.—ss.

John Barrack and J. E. Barrack, being first duly

sworn, each for himself and not one for the other, deposes and says:

I am a resident of Fairbanks Precinct, Territory of Alaska, and am not an attorney or counselor at law, marshal or deputy marshal or clerk of the Court or officer of any court in the Territory of Alaska; I am worth the amount named in the foregoing bond, in property not exempt from execution, situate in the Territory of Alaska, over and above all my just debts and liabilities.

J. E. BARRACK.

JOHN BARRACK,

Subscribed and sworn to before me this January 26, 1914.

(SEAL)

JOHN A. CLARK,

Notary Public for Alaska. My Commission expires Apr. 24, 1914.

Approved Jan. 26, 1914.

F. E. FULLER,

District Judge.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jan. 26, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.

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[Title of Court and Cause.]

**Designation of Place for Hearing of Writ of Error.**

To the Hon. Frederic E. Fuller, Judge of the above named Court, to the Plaintiffs and their Attorney:

Now come the defendants, plaintiffs in error, in the



above entitled action, and pursuant to the provisions of the Act of Congress giving the designation of the place of hearing on writs of error to the plaintiffs in error, do hereby designate the City and County of San Francisco, State of California, as the place for the hearing on the writ of error in the above entitled action.

Dated at Fairbanks, Alaska, January 26th, A. D. 1914.

McGOWAN & CLARK,  
Attorneys for Defendants.

Due service hereof admitted this January 26th, A. D. 1914.

CECIL H. CLEGG,  
Attorney for Plaintiffs.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Jan. 26, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.

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[Title of Court and Cause.]

**Nunc Protunc Order Extending Time Within Which  
to File and Docket Cause on Writ of Error.**

The above matter coming on for hearing upon motion of the defendants above named, the plaintiffs in error, for an order extending the time within which to file and docket the record herein on writ of error, with the Clerk of the Circuit Court of Appeals at San Francisco; and it appearing to the satisfaction of the court that on January 26 1914 an order was made extending said time to April 1, 1914, and

that thereafter and on or about March 16, 1914, an order was made by this court extending said time until May 1, 1914, and that through excusable error or oversight, said order was not entered at said time and has not since been entered of record; and it further appearing to the satisfaction of this court that it has been impossible to have said record printed in time to have same filed with the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, on or before May 1, 1914, owing to the inability of the printers to prepare said record in said time, and that the extension requested until June 1, 1914, is not unreasonable, now, therefore,

IT IS ORDERED that the time within which the defendants above named, the plaintiffs in error, shall file and docket their record on writ of error, with the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, be, and same is hereby extended until June 1, 1914, and that this order be entered **nunc protunc** as of March 31, 1914, to which order plaintiffs except and this exception is allowed.

Done in open court this 15th day of April, 1914.

F. E. FULLER,

District Judge.

Entered in Court Journal No. 12, page 904.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Apr. 15, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.

[Title of Court and Cause.]

**Praecipe for Transcript.**

**TO THE CLERK OF THE ABOVE ENTITLED COURT:**

You will please prepare a transcript of the record in the above entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, situate at San Francisco, California, under writ of error heretofore perfected to said Court, and include in said transcript the following papers, to-wit:

1. Complaint.
2. Separate Answer of R. M. Courtney.
3. Separate Answer of H. K. Love.
4. Reply to Answer of R. M. Courtney.
5. Reply to Answer of H. K. Love.
6. Bill of Exceptions.
7. Judgment.
8. Petition for Writ of Error.
9. Assignment of Error.
10. Order Allowing Writ of Error and Fixing Bond.
- 11 Writ of Error.
12. Citation on Writ of Error.
13. Order Relative to Supersedeas Bond on Writ of Error.
14. Supersedeas Bond on Writ of Error.
15. Designation of Place for Hearing on Writ of Error.
16. Nunc Protunc Order Extending Time Within Which to File and Docket Cause on Writ of Error.



17. Stipulation Relative to Printing Record.

18. Praeceptum for Transcript.

This transcript to be prepared as required by law and the orders and rules of this Court and the United States Circuit Court of Appeals for the Ninth Circuit, and is to be printed and certified to by you under and by virtue of the rule of this Court for printing of records on appeal or writ of error, made March 21, 1914, and when so printed and certified is to be filed in the office of the Clerk of said United States Circuit Court of Appeals in San Francisco, California, on or before the first day of June, 1914, pursuant to order of this Court extending the time to file said record. **McGOWAN & CLARK,**

Attorneys for Defendants.

Due service of the within Praeceptum and receipt of a copy thereof are hereby acknowledged this 21st day of April, 1914, and consented that said papers shall constitute the record on writ of error herein.

**CECIL H. CLEGG,**

Attorney for Plaintiffs, the Defendants in Error.

(Indorsed): Filed in the District Court, Territory of Alaska, 4th Div., Apr. 22, 1914. Angus McBride, Clerk.

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**Clerk's Certificate to Record.**

United States of America,  
Territory of Alaska,  
Fourth Division.—ss.

I, **ANGUS McBRIDE**, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby cer-

tify that the foregoing, consisting of 161 pages, numbered from 1 to 161, inclusive, constitutes a full, true and correct transcript of the record on writ of error in Cause No. 1799, entitled Tom P. King and Baptiste Serafino, Trustees, Plaintiffs, vs. R. M. Courtney and H. K. Love, Defendants, wherein R. M. Courtney and H. K. Love are Plaintiffs in Error and Tom P. King and Baptiste Serafino, Trustees, are Defendants in Error, and was made pursuant to and in accordance with the praecipe of the Plaintiffs in Error, filed in this action and made a part of this transcript, and by virtue of the citation issued in said cause, and is the return thereof in accordance therewith; and I further certify that this transcript of record was printed under and by virtue of and in compliance with a "Rule for Printing Records on Appeal or Writ of Error", made by this Court on the 21st day of March, 1914, and that said transcript of record was indexed by me pursuant to said rule, and that the index thereof, consisting of pages i to iii, is a correct index of said transcript of record; also that the costs of preparing said transcript and this certificate, amounting to sixty and 50-100 dollars (\$60.50), have been paid to me by counsel for Plaintiffs in Error in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, this second day of May, 1914.

(SEAL)

ANGUS M'BRIDE,  
Clerk District Court, Territory  
of Alaska, 4th Division.

